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CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO

STATE OF OHIO, ex rel.  
JIM PETRO,  
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

THUNDER PROPERTY HOLDINGS,  
LLC,  
BILLY L. ROBINSON, and  
CHARLES E. DEYE, JR.

Defendants.

CASE NO. CV06-07-2543

JUDGE SPAETH

CONSENT ORDER FOR PERMANENT  
INJUNCTION

Plaintiff State of Ohio, by its Attorney General, Jim Petro, at the written request of the Director of the Ohio Environmental Protection Agency ("Director"), together with Defendants Charles E. Deye, Jr., Billy L. Robinson and Thunder Property Holdings, LLC (collectively "Defendants") hereby consent to the entry of this Consent Order for Permanent Injunction.

NOW, THEREFORE, without adjudication or admission of any issue of fact or law, and upon consent of Plaintiff and Defendants (the "Parties"), it is hereby ORDERED, ADJUDGED and DECREED as follows:

**I. DEFINITIONS**

1. As used in this Consent Order:

"Consent Order" or "Order" means this Consent Order For Permanent Injunction.

"Defendants" mean Charles E. Deye, Jr. ("Defendant Deye"), and Billy L. Robinson ("Defendant Robinson"), and Thunder Property Holdings, LLC ("Defendant TPH").

**“Director”** means the Director of the Ohio Environmental Protection Agency.

**“Director’s Final Findings & Orders” (DFF&Os)** means the Administrative Order By Consent issued by the Director to AEP Flexo, Inc., and journalized on July 28, 1993 and subsequent modifications dated October 10 and December 4, 1996 and is identified as Appendix A.

**“Facility”** means the former AEP Flexo, Inc. property located at 1300 Hook Drive, Butler County, Middletown, Ohio, presently owned by Thunder Property Holdings, LLC.

**“Ohio EPA”** means the Ohio Environmental Protection Agency.

**“Ohio Adm. Code”** means the Ohio Administrative Code.

**“Plaintiff”** or **“State”** means the Ohio Environmental Protection Agency by and through the Attorney General of Ohio.

**“Response Costs”** means all costs incurred by Ohio EPA including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, overhead costs, legal and enforcement related costs, oversight costs, laboratory costs, and the costs of reviewing or developing plans, reports, and other items pursuant to this Order, verifying the work, or otherwise implementing or enforcing this Order.

**“R.C.”** means the Ohio Revised Code.

**“Site”** means the former AEP Flexo, Inc. property located at 1300 Hook Drive, Butler County, Middletown, Ohio, including any area beyond the Facility where hazardous waste or constituents, industrial wastes, and/or other wastes have migrated or threaten to migrate.

“VOCs” means the Volatile Organic Compounds listed in U.S. EPA’s SW 846, Test Methods for Evaluating Solid Waste, Method 8260B, Target Compound List.

**II. JURISDICTION AND VENUE**

2. The Parties agree that this Court has jurisdiction over them and the subject matter of this Consent Order, and that venue is proper in this Court for the purposes and duration of this Consent Order. The Complaint states a claim upon which relief can be granted.

**III. PARTIES BOUND**

3. The provisions of this Consent Order shall apply to and be binding upon the Parties; their respective heirs, successors in interest, and assigns, and others to the extent provided by Civil Rule 65(D). The undersigned representative of each Party to this Consent Order certifies that he or she is fully authorized by the Party or Parties whom she or he represents to enter into the terms and conditions of the Consent Order and to execute and legally bind that Party or Parties to it.

4. This Consent Order is in settlement and compromise of disputed claims by the Plaintiff and nothing contained in this Consent Order is to be construed as an admission of any facts or liability.

5. The Facility is currently owned by Thunder Property Holdings, LLC (“TPH”), Defendant Robinson is the sole owner of TPH. No change in ownership of property belonging to Defendants including, but not limited to, any transfer of assets or real or personal property shall in any way alter Defendants’ obligations under this Consent Order.

6. Defendants shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories and consultants retained to perform any portion of the work pursuant to this Consent Order. Defendants shall ensure that all contractors, subcontractors, laboratories

and consultants retained to perform work pursuant to this Consent Order comply with the applicable provisions of this Consent Order.

7. The obligations of Defendants to finance and perform the injunctive relief requirements and to pay the amounts to the State under this Consent Order are joint and several. In the event of the insolvency or failure of any Defendant to implement the requirements of this Consent Order, the remaining Defendants or Defendant shall complete all such requirements.

#### **IV. PERMANENT INJUNCTION**

8. The Parties acknowledge that the Site was the subject of Director's Final Findings and Orders effective July 28, 1993, and amended on October 10, 1996 and December 4, 1996 (attached as Appendix A and herein referred to as "DFF&Os"), issued to Defendant AEP Flexo, Inc. ("AEP Flexo"). The Parties acknowledge that portions of the work required by the DFF&Os have been completed. Specifically, the Focused Site Characterization/Conceptual Design (FSC/CD) Work Plan was approved by Ohio EPA on January 12, 1994, and the FSC/CD report was approved on December 31, 1996. Defendants are ordered and enjoined to remediate the Site, pay all costs, and comply with all other requirements as set forth in this Consent Order. Furthermore, Defendants shall complete the work in accordance with the Statement of Work attached to the DFF&Os.

9. All work to be performed by the Defendants pursuant to this Consent Order shall be under the direction and supervision of a qualified environmental engineer, geologist, or other appropriate professional person with expertise in hazardous waste site investigation, removal and bioremediation. Prior to the initiation of the Site work, the Defendants shall notify Ohio EPA in writing regarding the name, title, and qualifications of such engineer, geologist, or other

appropriate professional person and of any contractors and/or subcontractors to be employed in carrying out the terms of this Consent Order.

10. Attachment B of Appendix A, "Guidance Documents for the Development of the Workplan," contains a list of guidance documents for the completion of the work required by this Consent Order. Defendants shall complete the work required by this Consent Order in conformance with the current version of the guidance documents listed in that attachment. Attachment B of Appendix A is modified to include "Methods for Evaluating Attainment of Cleanup Standards, Vol. 2: Ground Water, U.S. EPA, July 1992, Office of Policy, Planning, and Evaluation Publication EPA/230/R-92-014." If Ohio EPA determines if any additional guidance documents affect the work to be performed under this Consent Order, the Ohio EPA will notify the Defendants in writing of the additional guidance and any affected documents and the Detailed Plans and Specifications shall be amended accordingly.

11. Ground Water Cleanup Goal. The maximum contaminant level (MCL) for tetrachloroethylene (PCE) may be used as the ground water cleanup goal for PCE; provided that, no other VOCs are detected at the Site during monitoring of the work required by this Consent Order. If other VOCs are detected, Defendants shall develop alternative cleanup goals for both PCE and the other detected VOCs in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 CFR Part 300, Federal Register Vol. 55, No. 46, Thursday, March 8, 1990, as amended.

12. Within thirty (30) days of a reporting of other VOCs, Defendants shall submit proposed alternative cleanup goals to Ohio EPA. Ohio EPA will review the submittal pursuant to Section VI of this Consent Order, and Defendants shall implement the alternative cleanup goals as approved by Ohio EPA.

#### A. BIO-REMEDIATION TECHNOLOGY

13. Ohio EPA has reviewed a summary of Defendants' bio-remediation technology proposal for remediation of the Site and agrees with the conceptual approach. Therefore, pursuant to the Statement of Work, set forth in the DFF&Os (Attachment A of Appendix A), the Defendants shall, within ninety (90) days of the effective date of this Consent Order, submit to Ohio EPA for review and approval an addendum to the original detailed plans and specifications approved by Ohio EPA on August 20, 1997, and a schedule for implementation for the bio-remediation technology to achieve the ground water cleanup goal(s). Upon approval of the detailed plans and specifications by Ohio EPA, the Defendants shall implement the bio-remediation technology in accordance with the requirements and schedule contained in the approved detailed plans and specifications and the Statement of Work.

14. Ohio EPA's approval of the detailed plans and specifications for the bio-remediation technology will set forth the ground water cleanup goal(s) for the remediation of VOCs in ground water based on the ground water data Defendants include as part of the detailed plans and specifications submittal. Ohio EPA's approval will also require that the schedule for achieving the ground water cleanup goal(s) using the bio-remediation technology shall not extend beyond twelve (12) months after the effective date of Ohio EPA's approval of the detailed plans and specifications. Finally, Ohio EPA's approval will require compliance confirmation monitoring, the same confirmation period set forth in the DFFOs, to assure that the cleanup goal(s) are maintained.

B. AIR SPARGING AND SOIL VAPOR EXTRACTION GROUND WATER  
REMEDICATION SYSTEM OR ALTERNATIVE GROUND WATER REMEDIATION  
TECHNOLOGY

15. If the ground water cleanup goal(s) are not achieved within twelve (12) months after Ohio EPA's approval of the detailed plans and specifications for the bio-remediation technology, then Defendants shall, within the next thirty (30) days, submit to Ohio EPA for review and approval detailed plans and specifications for an air sparging and soil vapor extraction ("AS/SVE") ground water remediation system or an alternative ground water remediation technology at the Site. Upon approval of the detailed plans and specifications by Ohio EPA, the Defendants shall implement the AS/SVE ground water remediation system or alternative ground water remediation technology in accordance with the requirements and schedule contained in the approved detailed plans and specifications and the Statement of Work. Defendants shall and operate and maintain the approved AS/SVE ground water remediation system or the approved alternative ground water remediation technology until the ground water cleanup goal(s) are met. After the ground water cleanup goal(s) are met, Defendants shall initiate the compliance confirmation monitoring period set forth in the DFFOs.

16. If the ground water cleanup goal(s) using the bio-remediation technology are achieved within twelve (12) months after the Ohio EPA's approval of the detailed plans and specifications but are not maintained through the compliance confirmation monitoring period, then the Defendants shall, within thirty (30) days of receipt of Ohio EPA's determination in writing that the ground water cleanup goal(s) have not been maintained, submit, as set forth in paragraph 15, above, the detailed plans and specifications for the AS/SVE ground water remediation system or alternative ground water remediation technology at the Site. Defendants

shall operate the approved AS/SVE ground water remediation system or alternative ground water remediation technology as set forth in Paragraph 15.

#### C. PROGRESS REPORTS

17. Defendants shall provide quarterly progress reports to the Ohio EPA Site Coordinator covering the work or activities carried out by the Defendants during the previous three months as required by this Consent Order. These quarterly progress reports shall be submitted to the Ohio EPA Site Coordinator on or before the tenth (10<sup>th</sup>) day of the calendar month following the end of the quarter. These quarterly progress reports shall include, at a minimum, the following information:

- a. A description and estimate of the percentage of the interim action tasks completed;
- b. Summaries of all sampling results and other relevant findings;  
Summaries of all problems or potential problems encountered;
- c. All actions being taken to rectify problems occurring at the Site; and
- d. Summaries of the projected work to be performed in the next reporting period.

#### D. COMPLETION OF GROUND WATER REMEDIATION.

18. Defendants shall notify Ohio EPA in writing when the ground water cleanup goal(s) have been achieved and maintained through the compliance monitoring period and request Ohio EPA's approval that the ground water remediation is complete. Ohio EPA will review Defendants request and advise in writing whether the ground water remediation is complete or whether more work must be done as required by this Consent Order.

## **V. DESIGNATED SITE COORDINATORS**

19. Within seven (7) days of the effective date of this Consent Order, the Defendants shall notify Ohio EPA, in writing, of the name, address and telephone number of its designated Site Coordinator and Alternate Site Coordinator. If a designated Site Coordinator or Alternate Site Coordinator is changed, the identity of the successor will be given to the other Parties at least seven (7) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

20. To the maximum extent practicable, except as specifically provided in this Consent Order, communications between Defendants and Ohio EPA concerning the implementation of this Consent Order shall be made between the Site Coordinators. Defendants' Site Coordinator shall be available for communication with Ohio EPA regarding the implementation of this Consent Order for the duration of this Consent Order. Each Site Coordinator shall be responsible for ensuring that all communications from the other Parties are appropriately disseminated and processed. Defendants' Site Coordinator or Alternate Site Coordinator shall be present on the Site or on call during all hours of work at the Site.

21. Without limitation of any authority conferred on Ohio EPA by statute or regulation, the Ohio EPA Site Coordinator's authority includes but is not limited to the following:

- a. Directing the type, quantity and location of samples to be collected by Defendants pursuant to an approved Detailed Plans and Specifications;
- b. Collecting samples;
- c. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or

photographic device;

d. Directing that the work stop whenever the Site Coordinator for Ohio EPA determines that the activities at the Site may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination;

e. Conducting investigations and tests related to the implementation of this Consent Order;

f. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of this Consent Order; and

g. Assessing Defendants' compliance with this Consent Order.

## **VI. REVIEW OF SUBMITTALS**

22. Ohio EPA shall review any work plan, report, or other item required to be submitted pursuant to these Orders. Upon review, Ohio EPA may in its sole discretion: (a) approve the submission in whole or in part; (b) approve the submission upon specified conditions; (c) modify the submission; (d) disapprove the submission in whole or in part, notifying Defendants of deficiencies; or (e) any combination of the above. The results of Ohio EPA's review shall be in writing and provided to the Defendants.

23. In the event of approval, approval upon condition, or modification of any submission by the Ohio EPA, Defendants shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA.

24. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Defendants in writing of the deficiencies, Defendants shall within fourteen (14) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies

and submit the revised submission to Ohio EPA for approval. The revised submission shall incorporate all of the undisputed changes, additions, and/or deletions specified by Ohio EPA in its notice of disapproval. Revised submissions shall be accompanied by a letter indicating how and where each of Ohio EPA's comments were incorporated into the submission. Any other changes made to the submission by Defendants shall also be identified in the letter.

25. In the event that Ohio EPA disapproves a revised submission, in whole or in part, and notifies Defendants in writing of the deficiencies, Defendants shall within fourteen (14) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and incorporate all changes, additions, and/or deletions, and submit the revised submission to Ohio EPA for approval. If Defendants fail to submit a revised submission incorporating all changes, additions, and/or deletions within fourteen (14) days, or such period of time as specified by Ohio EPA in writing, Defendants shall be considered in breach and/or violation of these Orders. If Defendants are in breach and/or violation of these Orders, Ohio EPA retains the right to terminate this Consent Order, perform any additional remediation, conduct a complete or partial Source Control Interim Action (SCIA) and/or enforce the terms of this Consent Order as provided in the Section XVI. Reservation of Rights Section of this Consent Order.

26. All work plans, reports, or other items required to be submitted to Ohio EPA under these Orders shall, upon approval by Ohio EPA, be deemed to be incorporated in and made an enforceable part of this Consent Order. In the event that Ohio EPA approves a portion of a work plan, report, or other item, the approved portion shall be deemed to be incorporated in and made an enforceable part of this Consent Order.

## **VII. SATISFACTION OF LAWSUIT**

27. Except as provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability, including civil penalty liability for violations occurring prior to and on the date of filing of this Consent Order, of Defendants, their heirs, successors in interest, and assigns to Plaintiff for all claims alleged in the Complaint and Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607, regarding the payment of response costs. Nothing in this section shall apply to new conditions or new information about the Site, or to any violations arising out of acts or omissions first occurring after the date of entry of this Consent Order.

## **VIII. STIPULATED PENALTIES**

28. In the event that Defendants violate any of the requirements or prohibitions of this Consent Order, Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedules. For each day of each violation of this Consent Order up to thirty (30) days – One Hundred Dollars (\$100.00) per day; from thirty-one (31) days to sixty (60) days – Five Hundred Dollars (\$500.00) per day; over sixty (60) days – One Thousand Dollars (\$1,000.00) per day.

29. Stipulated penalties shall not begin to accrue for days 1 and 2, as set forth in the above schedules, if the milestone requirement or report submission deadline is met on or before day 3. If a milestone requirement or report submission deadline is not met on or before day 3, the Defendants shall be liable for stipulated penalties for days 1, 2, and 3 in addition to the days thereafter, until the milestone requirement or report submission deadline is met.

30. Any payment required to be made under the provisions of paragraph 28 of this Consent Order shall be made by certified check or money order for the appropriate amounts payable to "Treasurer, State of Ohio" and mailed to Mark Lemmon, or his successor, at the address in paragraph 31. Payments shall be made within forty-five (45) days from the date that the Defendants have violated requirements or prohibitions of this Consent Order. Such payment shall be deposited into the hazardous waste clean-up fund. A copy of any checks remitted shall be sent by Defendants to the Ohio EPA Site Coordinator.

#### **IX. ENFORCEMENT COSTS**

31. Defendants shall pay the enforcement costs of the Ohio Attorney General expended prior to the entry of this Consent Order, totaling One Thousand Dollars (\$1,000.00), by delivering a certified check in such amount for payment into the State Treasury to the credit of the Attorney General's General Reimbursement Account (also known as CAS Fund 106). The check shall be made payable to the order of "Treasurer, State of Ohio" and delivered to Mark Lemmon, or his successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43125-3400. This payment shall be made out of the Escrow Fund, and shall only be due if there is any money left after completion of work required by the Section IV., Permanent Injunction and payment of all the costs required by Section XV., Payment and Reimbursement of Costs. At such time, Defendants will be submitted an invoice from the Attorney General's Office requiring the payment. Any check submitted in compliance with this Section shall be in addition to and separate from any check submitted pursuant to any other section of this Consent Order.

## **X. POTENTIAL FORCE MAJEURE**

32. If any event occurs which causes or may cause a delay in Defendants' compliance with any requirement of this Consent Order, Defendants shall notify Ohio EPA in writing within fourteen (14) days from when a Defendant knew, or by the exercise of due diligence should have known, of the event, describing in detail the anticipated length of the delay, the precise cause or causes of delay, the measures taken and to be taken by Defendants to prevent or minimize the delay and the timetable by which those measures will be implemented. Defendants will adopt all reasonable measures to avoid or minimize any such delay.

33. In any action by the State of Ohio to enforce any of the provisions of this Consent Order Defendants may raise at the time the question of whether they are entitled to a defense that their conduct was caused by circumstances beyond their control. While the State of Ohio does not agree that such a defense exists, it is agreed by Defendants and the State of Ohio that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that a proceeding to enforce this Consent Order is commenced by the State. At that time the burden of proving that any delay was or will be caused by circumstance beyond the control of Defendants shall rest with Defendants. Failure by Defendants to timely comply with the notice requirements of this Section shall constitute a waiver by Defendants of any right they may have to raise such a defense. Changes in Defendants' financial circumstances shall not in any event constitute circumstances beyond the control of Defendants.

## **XI. ACCESS**

34. Defendants Robinson and TPH agree and consent that Defendant Deye and Ohio EPA and its employees and agents, shall have full access to the Facility at reasonable times

without the need for a warrant, as may be necessary for the implementation of this Consent Order.

35. To the extent that the Facility or any other property to which access is required for the implementation of this Consent Order is owned or controlled by persons or companies other than Defendants Robinson and TPH, then Defendants shall use their reasonable best efforts to secure from such person(s) access for Defendants and Ohio EPA as necessary to effectuate this Consent Order. Defendants shall submit copies of all access agreements they obtain to the Ohio EPA within ten (10) days of receipt. If any access required to effectuate this Consent Order is not obtained within thirty (30) days of the date that Ohio EPA notifies Defendants in writing that additional access beyond that previously secured is necessary, Defendants shall promptly notify the Ohio EPA in writing of the steps they have taken to obtain access. Ohio EPA may, as deemed appropriate, assist Defendants in obtaining access. If Ohio EPA agrees that best efforts have been made, then, failure to obtain access beyond Defendants' control is not subject to stipulated penalties.

36. Paragraphs 34 and 35 of this Consent Order shall not be construed to eliminate or restrict any State right to seek access to the Facility the State may otherwise have under Federal or State law.

## **XII. LAND USE AND CONVEYANCE OF TITLE**

### 37. Deed Notice.

Within thirty (30) days of the effective date of this Consent Order, Defendants Robinson and TPH shall file for recording with the Butler County Recorder's Office a deed notice for the property which is part of the Facility owned and controlled by Defendants Robinson and TPH. The deed notice shall be consistent with the template attached as Appendix

B and approved by Ohio EPA. The deed notice shall reference the existence of this Consent Order and the need to contact Defendants Robinson and TPH before any construction or excavation is undertaken at the property. A copy of the recorded deed notice shall be submitted to Ohio EPA within thirty (30) days of recording the notice. Thereafter, until such time as this Consent Order has been terminated, if Defendant TPH conveys any interest in the property included in the Facility, each deed, title, or other instrument shall contain a notice stating that the property is subject to this Consent Order and shall reference the potential for any monitoring or treatment systems present on the Facility as a result of this Consent Order. Defendants Robinson and TPH shall record a new deed notice for the property to reflect the subsequent construction of any monitoring or treatment systems on the Facility.

38. In the event that Ohio EPA makes a determination based on ground water monitoring results that the Facility, or any other property, is impacted by the contamination on the Site that is owned or controlled by persons other than Defendants Robinson and/or TPH, Defendants shall use their best efforts to secure the filing of deed notices by said property owners for all the properties affected by the contamination addressed by this Consent Order. The deed notice shall be consistent with the template attached as Appendix B and approved by the Ohio EPA. Copies of all deed notices filed for properties affected by the contamination on or emanating from the Facility shall be obtained by Defendants and provided to Ohio EPA upon request.

39. Land Use Self-Reporting Requirement.

Until such time as this Consent Order has been terminated, Defendants shall use best efforts to ensure that no portion of the Site will be used in any manner that would adversely affect the integrity of any treatment or monitoring systems at the Site. Until such time as this

Consent Order has been terminated or all treatment and monitoring systems have been removed from the Site Defendants shall submit on an annual basis, written documentation verifying that any treatment, or monitoring systems are in place and operational.

40. Notice of Transfer of Property.

Until such time as this Consent Order has been terminated, prior to each conveyance by Defendant TPH of an interest in any portion of the Facility or any portion thereof, including but not limited to easements, deeds, leases and mortgages, Defendants Robinson and TPH shall notify Transferee of the existence of any treatment, or monitoring systems and/or use restrictions, and shall provide a copy of this Consent Order to the Transferee. For conveyances of property interests other than leases and mortgages, Defendants Robinson and TPH shall notify Ohio EPA at least thirty (30) days in advance of each conveyance of an interest in any portion of the Facility that is owned by the Defendant TPH. Defendants Robinson and TPH's Notice to Ohio EPA shall include the name and address of the Transferee and a description of the provisions made for the continued access to and maintenance of the containment, treatment, and monitoring systems.

41. Confirmation of Conveyance.

Until such time as this Consent Order has been terminated, within thirty (30) days after each conveyance of an interest in any portion of the Facility that is owned by the Defendant TPH, but not including leases and mortgages, Defendants Robinson and TPH shall submit to Ohio EPA, via certified mail, the following information:

- a. A copy of the deed or other documentation evidencing the conveyance;
- b. The name, address, and telephone number of the new Facility owner and the name, address, and telephone number of the contact person for the new Facility

owner;

c. A legal description of the Facility, or the portion of the Facility, being transferred;

d. A survey map of the Facility, or the portion of the Facility, being transferred; and

e. The closing date of the transfer of ownership of the Facility, or portion of the Facility.

### **XIII. ASSURANCE OF ABILITY TO COMPLETE WORK**

42. Within thirty (30) days of entry of this Order, unless otherwise specified in writing by Ohio EPA, Defendants shall pay \$80,000 to an escrow account (the "Escrow Account") in order to ensure performance and completion of the work under this Consent Order. The Escrow Account shall be established in accordance with the terms of the Escrow Agreement, a copy of which is attached hereto as Appendix C of this Consent Order.

43. Verification of the existence and adequacy of the approved Escrow Account shall be submitted to Ohio EPA annually by the Defendants on the anniversary of the effective date of this Consent Order, or upon the request of Ohio EPA. In the event that the Ohio EPA determines at any time that the Escrow Account provided pursuant to this Section is inadequate, Defendants shall, within thirty (30) days of receipt of notice of Ohio EPA's determination, obtain and present to Ohio EPA another financial assurance mechanism to be approved by Ohio EPA. The Defendants may change the form of the financial assurance mechanism provided under this Section at any time, upon notice to and approval by Ohio EPA. Defendants' inability to demonstrate financial ability to complete the work shall not excuse performance of any activities required under this Consent Order. Defendants shall be entitled to any funds remaining in the

Escrow Account, including any accrued interest, upon completion of all the requirements of this Consent Order. In the event that completion of the work, payment of costs and stipulated penalties, and all other requirements under this Consent Order exceeds \$80,000, Defendants shall be responsible for any additional costs required to fully implement these obligations.

#### **XIV. SAMPLING AND DATA AVAILABILITY**

44. Unless otherwise agreed to by the Site Coordinators, Defendants shall notify Ohio EPA not less than fifteen (15) days in advance of all sample collection activity pursuant to this Consent Order. Upon request, Defendants shall allow split and/or duplicate samples to be taken by Ohio EPA. Ohio EPA shall also have the right to take any additional samples it deems necessary. Upon request, Ohio EPA shall allow Defendants to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Defendants' implementation of the Work.

45. Within seven (7) days of Defendants' receipt of a request by Ohio EPA, Defendants shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Defendants with respect to the Site and/or the implementation of this Consent Order. Defendants may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. Should Defendants subsequently discover an error in any report or raw data, Defendants shall promptly notify Ohio EPA of such discovery and provide the correct information.

## **XV. PAYMENTS AND REIMBURSEMENTS OF RESPONSE COSTS**

### 46. Past Response Costs.

Within thirty (30) days of entry of this Consent Order, Defendants shall pay \$40,000 as reimbursement for past Response Costs incurred by the State through the effective date of this Consent Order. This shall be paid to Ohio EPA by delivering a check in this amount made to the order of "Treasurer, State of Ohio" and forwarding it to the Hazardous Waste Special Cleanup Account, Office of Fiscal Administration, ATTN: Brenda Case or her successor, Ohio EPA, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-0149, and to the Fiscal Officer, DERR, ATTN: Steven Snyder or his successor, Ohio EPA, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-0149. Defendants shall send a copy of the transmittal letter and check to the Ohio EPA Site Coordinator and the Assistant Attorney General representing the State in this case forwarded to Assistant Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3428. Upon payment of this amount, Defendants shall have no further liability for any claim of response costs incurred by the State prior to the effective date of this Consent Order.

### 47. Future Response Costs.

Defendants shall reimburse the State of Ohio for all Response Costs incurred by the State from the effective date of this Consent Order and continuing through the termination of this Consent Order. Ohio EPA will submit an itemized statement of these Response Costs to Defendants on an annual basis. Defendants shall make payment of these Response Costs within thirty (30) days of receipt of the itemized statement. The Parties acknowledge that these Response Costs may be paid directly from the Escrow Account pursuant to the Escrow Agreement. Payments pursuant to this Section will be made to the order of "Treasurer, State of Ohio" and will be forwarded to

the Hazardous Waste Special Cleanup Account, Office of Fiscal Administration, ATTN: Brenda Case or her successor, Ohio EPA, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-0149, and to the Fiscal Officer, DERR, ATTN: Steven Snyder or his successor, Ohio EPA, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-0149.

#### **XVI. RESERVATION OF RIGHTS**

48. This Consent Order shall not be construed to limit the authority of the State to seek relief for claims or conditions not alleged in the Complaint, new conditions at or new information about the Site, and/or any violations arising out of acts or omissions first occurring after the date of entry of this Consent Order. This Consent Order reserves all rights as to the Defendants for any violations or conditions which occur after the entry date of this Consent Order, and by entering into this Consent Order the Defendants do not waive any rights, claims or defenses which they may have in any such action or amongst themselves or against any others not a party to this action except that Defendants shall not assert, and may not maintain, by answer, motion, or otherwise, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims, demands, rights or causes of action raised by the State in the subsequent proceeding were or should have been brought in the instant case.

49. Nothing in this Consent Order shall be construed to limit the authority of the State to undertake any action against any entity, including Defendants, to eliminate or mitigate conditions which may present a substantial threat to the public health, welfare or environment and to seek cost reimbursement for any such action. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief for damages to natural resources, and by entering into this Consent Order the Defendants do not waive any rights, claims or defenses

that they may have in any such action. This reservation also explicitly includes any and all claims the State of Ohio may have concerning any disposal of wastes or discharge of pollutants or industrial wastes by Defendants at any location other than the Facility. This Consent Order in no way waives any defenses which Defendants may have as to such additional relief except that Defendants shall not assert, and may not maintain, by answer, motion, or otherwise, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims, demands, rights or causes of action raised by the State in the subsequent proceeding were or should have been brought in the instant case.

50. Nothing in this Consent Order shall relieve Defendants of any obligation to comply with R.C. Chapters 3734, 6111, and 3704 including, without limitation, any regulation, license or order issued under these Chapters, and any other applicable federal, state or local statutes, regulations, or ordinances, including but not limited to permit requirements.

51. The State reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of this Consent Order, including penalties against Defendants for noncompliance with this Consent Order. This Consent Order in no way waives any defenses that Defendants may have with respect to any claims for such additional relief.

52. The State reserves the right to perform all or any portion of the requirements of Section IV., Permanent Injunction or any other measures, including recovery of all response costs associated therewith, in the event that the requirements of this Consent Order are not wholly complied with within the time frames required by this Consent Order.

## **XVII. OTHER CLAIMS**

53. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against AEP Flexo, Inc. or any other person, firm, partnership, or corporation, not subject to this Consent Order for any liability arising from, or related to, events or conditions at the Site.

## **XVIII. SUBMITTAL OF DOCUMENTS, REPORTS AND NOTICES**

54. Unless otherwise stated in this Consent Order, all documents and notices required to be submitted to any Party as part of this Consent Order shall be by U.S. Mail to the following persons and addresses, or to such persons and addresses as the parties may hereafter designate in writing.

To Defendant Robinson and TPH:

Mr. Billy L. Robinson  
109 Marisa Drive  
Middletown, Ohio 45042

To Defendant Dye:

Mr. Charles E. Deye, Jr.  
5514 Pine Crest Drive  
Cincinnati, Ohio 45238

To Plaintiff State of Ohio:

ATTN: Chuck Mellon, Site Coordinator  
Ohio EPA  
Southwest District Office  
401 East Fifth Street  
Dayton, Ohio 45402-2911

A Party may designate an alternative contact name or address upon written notification to the other Parties.

## **XIX. APPENDICES**

55. All appendices to this Consent Order are incorporated by reference as if fully restated herein and are an enforceable part of this Consent Order. This Consent Order has the following appendices:

- A. "Appendix A" is the July 28, 1993 Director's Final Findings & Orders with the SOW attached and subsequent modifications dated October 10 and December 4, 1996;
- B. "Appendix B" is the Sample Deed Notice; and
- C. "Appendix C" is the Escrow Agreement (copy).

In addition all plans and/or other submittals approved as set forth in this Consent Order are incorporated by reference if fully restated herein and are an enforceable part of this Consent Order.

## **XX. TERMINATION**

56. This Consent Order shall terminate upon joint motion of the Parties, and approval of the Court, following completion of all activities required under this Consent Order. This Section, and the Sections of this Consent Order on Reservation of Rights and Other Claims shall survive this Termination Provision.

## **XXI. MODIFICATION**

57. No modification shall be made to this Consent Order without the written agreement of the Parties and the Court.

## **XXII. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

58. By signing this Consent Order, each of the undersigned Parties represent and warrant that he/she has completely read the foregoing, fully understands its contents, and intends to be bound thereby.

59. In addition, in the case of corporations, each signatory represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

**XXIII. RETENTION OF JURISDICTION**

60. This Court shall retain jurisdiction of this matter for the purpose of enforcing Defendants compliance with this Consent Order.

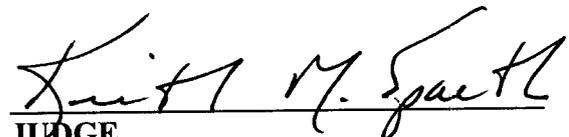
**XXIV. PUBLIC NOTICE**

61. The Parties agree and acknowledge that final approval by the Plaintiff and Defendants, and entry of this Consent Order is subject to the requirement of 40 C.F.R. § 123.27(d)(2)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. The State and Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period. Defendants shall pay the cost of publishing the public notice.

**XXV. COURT COSTS**

62. Defendants shall pay the court costs of this action.

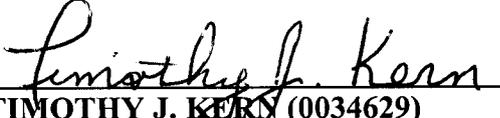
SO ORDERED THIS 5<sup>TH</sup> DAY OF September, 2006.

  
\_\_\_\_\_  
JUDGE  
BUTLER COUNTY COURT OF  
COMMON PLEAS

The undersigned Plaintiff hereby consents to the foregoing Consent Order in State of Ohio v. Thunder Property Holdings, LLC, et al.

APPROVED BY:

**JIM PETRO**  
**ATTORNEY GENERAL OF OHIO**

  
**TIMOTHY J. KERN (0034629)**  
Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215-3428  
Telephone: (614) 466-2766  
Facsimile: (614) 644-1926  
[tkern@ag.state.oh.us](mailto:tkern@ag.state.oh.us)  
*Attorney for Plaintiff*  
*State of Ohio*

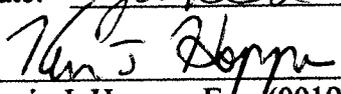
The undersigned Defendants hereby consent to the foregoing Consent Order in State of Ohio v. Thunder Property Holdings, LLC, et al.

Charles E. Deye, Jr

By: 

Signature

Date: June 26, 2006

  
Kevin J. Hopper, Esq. (0019730)  
Attorney for Charles E. Deye, Jr.  
Southampton Square  
7434 Jager Court  
Cincinnati, Ohio 45230  
Telephone: (513) 232-7578  
Facsimile: (513) 232-7654  
[hopperlaw@aol.com](mailto:hopperlaw@aol.com)

Billy L. Robinson

By: \_\_\_\_\_

Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
James R. Wells, Esq. (0072669)  
Attorney for Billy L. Robinson  
Frost Brown Todd LLC  
300 North Main Street, Suite 200  
Middletown, Ohio 45042  
Telephone: (513) 422-2001  
Facsimile: (513) 422-3010  
[jwells@fbtlaw.com](mailto:jwells@fbtlaw.com)

The undersigned Defendants hereby consent to the foregoing Consent Order in State of Ohio v. Thunder Property Holdings, LLC, et al.

Charles E. Deye, Jr.

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

---

Kevin J. Hopper, Esq. (0019730)  
Attorney for Charles E. Deye, Jr.  
Southampton Square  
7434 Jager Court  
Cincinnati, Ohio 45230  
Telephone: (513) 232-7578  
Facsimile: (513) 232-7654  
[hopperlaw@aol.com](mailto:hopperlaw@aol.com)

Billy L. Robinson

By:   
Signature

Date: 6/28/06



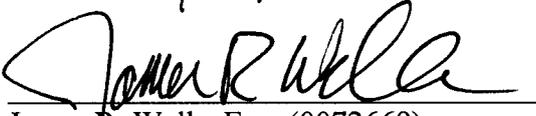
James R. Wells, Esq. (0072669)  
Attorney for Billy L. Robinson  
Frost Brown Todd LLC  
300 North Main Street, Suite 200  
Middletown, Ohio 45042  
Telephone: (513) 422-2001  
Facsimile: (513) 422-3010  
[jwells@fbtlaw.com](mailto:jwells@fbtlaw.com)

The undersigned Defendants hereby consent to the foregoing Consent Order in State of Ohio v. Thunder Property Holdings, LLC, et al.

Thunder Property Holdings, LLC

By:   
Billy L. Robinson

Date: 6/28/06

  
James R. Wells, Esq. (0072669)  
Attorney for Thunder Property Holdings, LLC  
Frost Brown Todd LLC  
300 North Main Street, Suite 200  
Middletown, Ohio 45042  
Telephone: (513) 422-2001  
Facsimile: (513) 422-3010  
[jwells@fbtlaw.com](mailto:jwells@fbtlaw.com)

**APPENDIX A**

**July 28, 1993 Director's Final Findings & Orders  
and subsequent modifications dated October 10 and December 4, 1996**

Issue Date JUL 28 1993  
Effective Date JUL 28 1993

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of

AEP Flexo, Inc.  
200 Benham Street  
Dayton, Kentucky 41074

Respondent

DIRECTOR'S FINAL FINDINGS  
AND ORDERS

ADMINISTRATIVE ORDER BY  
CONSENT

PREAMBLE

It is hereby agreed by and among the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Sections 3734.13, 3734.20, and 3745.01 of the Ohio Revised Code ("ORC").

II. PARTIES

These Orders shall apply to and be binding upon the Respondent, their assigns and successors.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Ohio EPA has determined that all findings of fact necessary for the issuance of these Orders, pursuant to ORC Sections 3734.13 and 3734.20 have been made and are outlined below. The Ohio EPA has determined the following:

- A. Mr. Billy L. Robinson is the current owner of the property located at 1300 Hook Drive, Middletown, Ohio (hereinafter referred to as

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By: Mary Carin Date 7-28-93

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the "Site").

- B. Between 1984 and 1990, the Respondent manufactured flexographic printing plates at the Site. Tetrachloroethylene (PCE) and 1,1,1-trichloroethane (1,1,1-TCA) were used by the Respondent to dissolve unexposed photopolymer from printing plates. PCE was reclaimed through the use of a distillation apparatus in a shed located at the west end of the main building located at the Site.
- C. On October 25, 1991, Ohio EPA surveyed the Site for ionizable gases in soils using a photoionization detector ("PID"), the PID was inserted two to three feet (2' to 3') in the soil in several locations at the Site. Readings from the PID registered peak values greater than 2000 meter units at locations near the distillation shed described in Article III, paragraph B, above.
- D. On January 3, 1992, the Ohio EPA collected soil samples from an area approximately fifty feet (50') northwest of the northwest corner of the main building at the Site, hereinafter specified as location #1, from an area approximately twenty-five feet (25') northeast of the northwest corner of the main building at the Site, hereinafter specified as location #2, and from an area approximately ten feet (10') northwest of the distillation shed described in Article III, paragraph B, above, hereinafter specified as location #3. Results from the analysis of the samples collected are as follows: ("ug/kg" designates microgram per kilogram and "ND" indicates not detected)

Compound	Sample Location & Results (ug/kg)		
	<u>1</u>	<u>2</u>	<u>3</u>
PCE	10	8	76,000
1,1,1-TCA	ND	8	ND
TCE	ND	5	1,000

- E. The City of Middletown operates a well field in the Great Miami

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River valley in proximity to the Site. Production wells are located south, east, and north of the Site. City wells draw water from unconsolidated deposits underlying the Great Miami River floodplain. Results from analysis of water samples collected by the City of Middletown from production well CW-1 reveal the presence of the following volatile organic compounds ("\_" designates below detection limit) ("ug/l" designates microgram per liter):

<u>Date Collected</u>	<u>PCE</u>	<u>TCE</u>	<u>cis-1,2-DCE*</u>	<u>1,1,1-TCA</u>
2/27/85	4.6 ug/l	-	-	-
10/1/86	13 ug/l	-	-	-
9/4/87	662 ug/l	-	-	-
5/26/88	37.9 ug/l	0.62 ug/l	-	0.56 ug/l
9/26/88	30.3 ug/l	3.61 ug/l	3.08 ug/l	0.45 ug/l
12/22/88	41.7 ug/l	0.9 ug/l	1.3 ug/l	-
2/1/89	40.5 ug/l	1.2 ug/l	2.1 ug/l	-
5/3/89	9.86 ug/l	17.2 ug/l	23.0 ug/l	0.2 ug/l
8/29/89	-	9.97 ug/l	33.6 ug/l	-
11/4/89	59.3 ug/l	0.44 ug/l	-	0.28 ug/l
2/9/90	67.7 ug/l	-	-	-

\* (cis-1,2-dichloroethylene)

Results from analysis of water samples collected by the City of Middletown from production well CW-2 reveal the presence of the following volatile organic compounds ("\_" designates below detection limit):

<u>Date Collected</u>	<u>PCE</u>	<u>TCE</u>	<u>cis-1,2-DCE</u>	<u>1,1,1-TCA</u>
2/27/85	3.4 ug/l	-	-	-
11/26/85	103.0 ug/l	-	-	-
10/1/86	81.5 ug/l	-	-	-
9/4/87	102.0 ug/l	-	-	0.58 ug/l
5/26/88	81.4 ug/l	0.73 ug/l	-	0.56 ug/l
9/26/88	31.6 ug/l	0.17 ug/l	-	0.24 ug/l
12/22/88	96.0 ug/l	-	-	-

Water samples collected by the City of Middletown from production well CW-4/5 reveal the presence of the following volatile organic compounds ("\_" designates below detection limit):

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<u>Date Collected</u>	<u>PCE</u>	<u>TCE</u>	<u>1,1,1-TCA</u>
2/27/85	30.4 ug/l	5.3 ug/l	1.0 ug/l
6/20/85	22.2 ug/l	-	-
11/26/85	314.0 ug/l	-	-
10/1/86	86.1 ug/l	-	-
9/4/87	192.0 ug/l	0.61 ug/l	0.56 ug/l
2/1/89	120.0 ug/l	0.7 ug/l	-
5/3/89	94.4 ug/l	-	-
11/4/89	89.5 ug/l	0.31 ug/l	0.25 ug/l
2/9/90	64.6 ug/l	-	-

- F. The Ohio EPA has determined that PCE, TCE, cis-1,2-DCE and 1,1,1-TCA became "industrial wastes" and/or other wastes as defined in ORC 6111.01(C) and (D) and/or "hazardous wastes" as defined in ORC 3734.01(J) and/or hazardous substances when released into the environment. For purposes of these Orders, "hazardous substances" shall have the same meaning as it is defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as amended, 42 USC 9601 et. seq.
- G. The discharge, deposit, injection, dumping, leaking, spilling, emitting, or placing of PCE, TCE, cis-1,2-DCE and 1,1,1-TCA into or onto the soil, groundwater, and surface water at the Site constitutes "disposal" of hazardous waste and/or solid wastes as defined in ORC 3734.01(F).
- H. The Site identified at 1300 Hook Drive, Middletown, Ohio is a "facility" as that term is defined in ORC Section 3734.01(N).
- I. The migration and threatened migration of these industrial wastes, other wastes, and/or hazardous wastes and substances into the soil, ground water, and/or surface water at the Site, constitutes "a release or threat of a release" as that term is defined in Section 101(22) of CERCLA, and is causing or threatening to cause an unpermitted discharge of industrial waste, other wastes, and/or

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hazardous wastes and substances into "waters of the state", as that term is defined in ORC Section 6111.01(H).

- J. The Respondent disposed of hazardous wastes at the Site, as the term "disposal" is defined in ORC 3734.01(F) and used in ORC 3734.20, and has placed or caused to be placed industrial wastes or other wastes in a location causing, or threatening to cause pollution to waters of this state, as the term "industrial wastes" is defined in ORC 6111.01(C) and as the term "other wastes" is defined in ORC 6111.01(D).

The Respondents release or disposal of industrial waste and/or hazardous waste at the Site constitutes a substantial threat to public health or safety or is causing or contributing to or threatening to cause or contribute to air, water pollution or soil contamination, pursuant to ORC 3734.20(B).

- K. The Respondent operated a facility as the term "operated" is used within Section 107(a) of CERCLA, and as the term "facility" is defined in Section 101(9) of CERCLA.

- L. The Respondent is a potentially "responsible person" as that term is used in Section 107 of CERCLA. The Respondent is a "person" as defined in Section 101(21) of CERCLA, and as defined in ORC Sections 3734.01(G) and 6111.01(I).

- M. Based upon information available to the Director as set forth in these Findings of Fact, the Director has determined that the work required by these Orders, set forth below, is in the nature of interim measures only, designed to contain, abate, mitigate and control contamination.

- N. The Director has given consideration to the evidence related to

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By: Mary Carvin Date 7-28-93

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documented activities which have occurred at the Site. Based upon the facts as presented, the Director believes that issuance of these Orders is furthering the intent of the General Assembly, that the Ohio EPA will prevent, control, or abate pollution of the environment for the protection and preservation of the health, safety, welfare, and property of the people of the state.

- O. The Director has determined the Findings of Fact and Conclusions of Law contained within these Orders. The Respondent does not admit to the Findings of Fact and Conclusions of Law made by the Director. However, the Respondent does otherwise agree to the Director's authority to issue these Orders and agrees to comply with the terms and conditions contained herein.

#### IV. WORK TO BE PERFORMED

A. All work to be performed by the Respondent pursuant to these Orders shall be under the direction and supervision of a qualified environmental engineer, geologist, or other appropriate professional person with expertise in hazardous waste site investigation and removal. Prior to the initiation of site work, the Respondent shall notify Ohio EPA in writing regarding the name, title, and qualifications of such engineer, geologist, or other appropriate professional person and of any contractors and/or subcontractors to be employed in carrying out the terms of these Orders.

B. Attachment A to these Orders contains the Statement of Work (SOW) for implementation of work at the Site. Within sixty (60) days of the effective date of these Orders, the Respondent shall submit to the Ohio EPA a draft Workplan for the implementation of the work at the Site. This Workplan and any required documents shall be developed in conformance with these Orders, the SOW, State law including ORC Chapters 3734. and 6111. and the regulations promulgated

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By: Mary Carvin Date 7-28-93

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thereunder, and the National Contingency Plan ("NCP") 40 CFR Part 300. The phrase "required documents" includes, but is not limited to, any plans or reports that are necessary for performing the work required by these Orders. The SOW is not specific to the Site and is to be used as an outline in developing the site specific Workplan. In the Workplan, the Respondent shall present the justification for the proposed omission of any tasks of the SOW because of work that has already been performed or work that is not appropriate to the Site. Any omission proposed by the Respondent is subject to review and approval by the Ohio EPA.

Upon written approval of the Workplan by Ohio EPA, the Respondent shall implement the work detailed in the Workplan in accordance with the schedule(s) contained therein. Schedules contained in the Workplan may be amended by mutual agreement of the Parties.

C. The Respondent shall incorporate any written comments that may be made by the Ohio EPA into the draft Workplan or draft required document. The Respondent shall submit a revised draft Workplan or revised draft required document to Ohio EPA within thirty (30) days of receipt of Ohio EPA's comments demonstrating the incorporation of Ohio EPA's comments. Following receipt by Ohio EPA of the revised draft Workplan or the revised draft required document, the Ohio EPA will either approve or disapprove, in writing, the draft Workplan or draft required document. Article IX of these Orders shall apply should a dispute arise between the Ohio EPA and the Respondent under Article IV, paragraph C, of these Orders.

D. Attachment B to these Orders contains a list of guidance documents for the development of the Workplan. The Respondent shall develop the Workplan in conformance with the most current version of the guidance documents listed on that attachment. The Respondent may in the Workplan explain the nonuse of any listed or additional guidance document or portion thereof. The nonuse of any

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By: Mary Carvin Date 7-28-93

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guidance document, or portion thereof, is subject to review and approval by the Ohio EPA. If Ohio EPA determines that any additional guidance documents affect the work to be performed under these Orders, the Ohio EPA will notify the Respondent in writing of the additional guidance and any affected documents and the Workplan shall be amended accordingly. Article IX of these Orders shall apply should a dispute arise between the Ohio EPA and the Respondent under Article IV, paragraph D, of these Orders.

E. The Respondent shall provide monthly progress reports to the Ohio EPA Site Coordinator covering the work or activities carried out by the Respondent during the previous calendar month. These monthly progress reports shall be submitted to the Ohio EPA Site Coordinator on or before the tenth (10th) day of each month. These monthly progress reports shall include, at minimum, the following information:

1. A description and estimate of the percentage of interim action tasks completed;
2. Summaries of all relevant findings, including, but not limited to, water level measurements, flow maps, sampling results, etc.;
3. Once implemented, an evaluation of the current effectiveness of all interim action systems in achieving these goals of the Orders;
4. Summaries of all changes made in the interim actions;
5. Summaries of all contacts with representatives of public interest groups, or city and state agencies and government;
6. Summaries of all problems or potential problems encountered;
7. All actions being taken to rectify problems occurring at the Site;
8. Summaries of the projected work to be performed in the next reporting period; and
9. Copies of daily reports, inspection reports, tabulated monitoring

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By: Mary Carvin Date 7-28-93

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and laboratory data, effluent monitoring data, QA/QC reports, geologic logs, monitoring well construction diagrams, etc., generated during the reporting period.

V. DESIGNATED SITE COORDINATORS

The Respondent and Ohio EPA shall each designate a Site Coordinator, and the Respondent may designate an alternate, as appropriate, for the purpose of overseeing the implementation of these Orders. To the maximum extent possible, except as specifically provided in these Orders, communications between the Respondent and Ohio EPA concerning the terms and conditions of these Orders shall be made between the designated Site Coordinators. Each designated Site Coordinator shall be responsible for assuring that all communications received from another Party are appropriately disseminated and processed. The Site Coordinators shall attempt to resolve disputes informally through good faith discussion on the technical issues.

Without limitation of any authority conferred on Ohio EPA by statutes or regulations, the Ohio EPA Site Coordinator's authority includes, but is not limited to: (1) taking samples or, in accordance with the terms of any workplan, directing the type, quantity and location of samples to be taken by the Respondent; (2) observing, and taking photographs and making such other reports on the progress of the work as deemed appropriate; (3) directing that work stop, whenever the Ohio EPA Site Coordinator determines that activities at the Site may uncover or create a threat to public health or welfare or the environment; and (4) reviewing records, files and documents relevant to these Orders, except for such records, files or documents which by law are privileged or otherwise immune from disclosure.

The Respondent's designated Site Coordinator or alternate shall be present on-site during all hours of work at the Site and shall make himself/herself

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By: Mary Gavin Date 7-28-93

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available for the pendency of these Orders. The absence of the Ohio EPA Site Coordinator from the Site shall not be cause for stoppage of work unless otherwise provided.

**VI. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim of action or demand in law or equity against any person, firm, partnership, corporation or company not a signatory to these Orders for any liability arising out of or relating to the operation at the Site.

**VII. OTHER APPLICABLE LAWS**

All work required to be taken pursuant to these Orders shall comply with the requirements of applicable local, state, and federal laws and regulations and shall be consistent with the NCP 40 CFR Part 300, as amended. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Respondent's operation of facility. The Ohio EPA reserves all rights and privileges except as specified herein.

**VIII. UNAVOIDABLE DELAYS**

The Respondent shall cause all work to be performed within the agreed time schedules provided for in any approved Workplan, unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean any event(s) beyond the control of the Respondent which prevents or delays performance of any obligation required by these Orders and which could not be overcome by due diligence on the part of the Respondent. Increased costs of compliance shall not be considered circumstances beyond the control of the Respondent. Such an event under these Orders may include, but is not limited to, the Respondent being denied access to the Site.

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By: Mary Cavin Date 7-28-93

OHIO EPA

JUL 28 1993

REGISTERED DIRECTOR'S SIGNATURE

The Respondent shall notify the Ohio EPA in writing no later than ten (10) business days after their discovery of the occurrence of any event which the Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by the Respondent to minimize the delay, and the timetable under which these measures will be implemented. The Respondent shall have the burden of demonstrating that the event(s) constitute(s) an unavoidable delay, and Ohio EPA shall make any determination with regard to such a claim. In the event that the Respondent fails to demonstrate that the delay(s) constitute(s) an "unavoidable delay," as determined by Ohio EPA and defined in these Orders, Ohio EPA reserves the right to enforce the terms and conditions of these Orders against the Respondent.

In the event that Ohio EPA agrees that an unavoidable delay has occurred, these Orders, including incorporated documents and any affected schedules thereunder, may be modified in the event the unavoidable delay affects such schedules. Article IX of these Orders shall apply should a dispute arise between the Ohio EPA and the Respondent under Article VIII of these Orders.

#### IX. DISPUTE RESOLUTION

A. Unless it is expressly noted that a particular Article or Section of these Orders is subject to the provisions of this Article, the dispute resolution process shall not apply.

B. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a disagreement about the adequacy or disapproval of the Workplan or any report, or disagreement about the conduct of the work performed under these Orders or the Workplan, or modified or additional work or schedules required under these Orders, the Site Coordinators shall have seven (7) days to negotiate in good faith in an attempt to resolve the differences.

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By: Mary Cavin Date 7-28-93

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C. In the event that the Site Coordinators are unable to reach consensus on the disapproval or disagreement in seven (7) days, then each Site Coordinator shall reduce his/her position to writing within seven (7) days of the end of the good faith negotiations referenced above. Those written positions shall be immediately exchanged by the Site Coordinators. Following the exchange of written positions, the parties shall have an additional seven (7) days to resolve their differences. If the Ohio EPA concurs with the position of the Respondent, Ohio EPA will amend the Workplan or modify these Orders to include necessary extensions of time or variances of required work.

D. If Ohio EPA does not concur with the position of the Respondent, the dispute shall be resolved by the Chief, Division of Emergency and Remedial Response or her/his designee, such designee not to be the Ohio EPA designated Site Coordinator for the Site, based upon and consistent with these Orders, the Workplan, and ORC Section 3734.20 and the regulations promulgated thereunder and any other appropriate State or federal law. The pendency of dispute resolution set forth in this Article shall not affect the time period for completion of work to be performed under these Orders or the Workplan, except that upon written mutual agreement of the parties, any time may be extended as appropriate under the circumstances. Such agreement will not be unreasonably withheld by Ohio EPA. Elements of work not affected by the dispute will be completed in accordance with the schedules contained in the Workplan.

**X. REIMBURSEMENT OF COSTS**

Ohio EPA has incurred and continues to incur oversight and response costs in connection with the Site. The Respondent shall remit payment by check to the Ohio EPA for those oversight and response costs which are not inconsistent with the NCP incurred up to the effective date of these Orders. Payment by the Respondent shall be made in three (3) equal installments with the first

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By: Mary Carvin Date 7-28-93

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installment due thirty (30) calendar days from the effective date of these Orders, the second installment due sixty (60) calendar days from the effective date of these Orders and the third installment due ninety (90) calendar days from the effective date of these Orders. Within sixty (60) days of the end of each calendar year, the Ohio EPA shall submit to the Respondent an itemized statement of such oversight and response costs of the Ohio EPA for the previous year. Following receipt of the itemized statement, the Respondent shall pay, within thirty (30) calendar days, the oversight and response costs incurred by the Ohio EPA which are not inconsistent with the NCP. Payment to Ohio EPA shall be made to the Ohio Hazardous Waste Clean-up Special Account, created under O.R.C. Section 3734.28, by check payable to "Treasurer, State of Ohio" and shall be forwarded to: Fiscal Officer, Division of Emergency and Remedial Response of Environmental Protection, P. O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio, 43266-0149. A copy of the transmittal letter shall be sent to Counsel for the Director at the second address listed in Article XI, below. Article IX of these Orders shall apply should a dispute arise between the parties under Article X, of these Orders, with regard to the nature of and amount of the oversight and response costs claimed in the itemized statements received by the Respondent.

#### XI. NOTICE

All documents required under these Orders are to be submitted to the Ohio EPA and shall be addressed to:

Ohio Environmental Protection Agency  
40 South Main Street  
Dayton, Ohio 45402  
ATTN: Site Coordinator, DERR

and

Ohio Environmental Protection Agency  
1800 WaterMark Drive

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P. O. Box 1049  
Columbus, Ohio 43266-0149  
Attn: Technical Support Unit, DERR

unless otherwise specified in these Orders or to such persons and addresses as may hereafter be otherwise specified in writing.

All submittals or notices to be made to the Respondent shall be addressed to:

AEP Flexo, Inc.  
200 Benham Street  
Dayton, Kentucky 41074  
Attn: Charles E. Deye, Jr.

OHIO EPA  
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DERR DIRECTOR'S OFFICE

**XII. RESERVATION OF RIGHTS**

A. Nothing contained herein shall be construed to prevent Ohio EPA from (1) seeking legal or equitable relief to enforce the terms of these Orders including penalties against the Respondent for noncompliance or claims for natural resources damages; or (2) completing any work described in these Orders. Ohio EPA reserves the right to take any enforcement action, recover costs, or seek damages for injury to natural resources pursuant to any available legal authority for past, present, or future violations of ORC Chapters 3734 or 6111, conditions at the Site, or releases of hazardous wastes.

B. Ohio EPA specifically reserves the right to perform or require the Respondent to perform additional investigation, removal, or remediation at the Site pursuant to ORC Chapters 3734 or 6111 or other applicable authority for these or any other conditions at the Site. Nothing herein shall restrict the right of the Respondent to raise any administrative, legal, or equitable defense with respect to such further actions which Ohio EPA may seek to require of the Respondent. Further, the Respondent reserves any rights it may have to raise any administrative, legal, or equitable defense in the event Ohio EPA claims that it is not in compliance with these Orders.

C. During the pendency of these Orders, and so long as the Respondent is in

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By: Mary Carvin Date 7-28-93

compliance with the Orders, the Ohio EPA agrees not to refer the Respondent to the Ohio Attorney General for only the work being undertaken pursuant to these Orders.

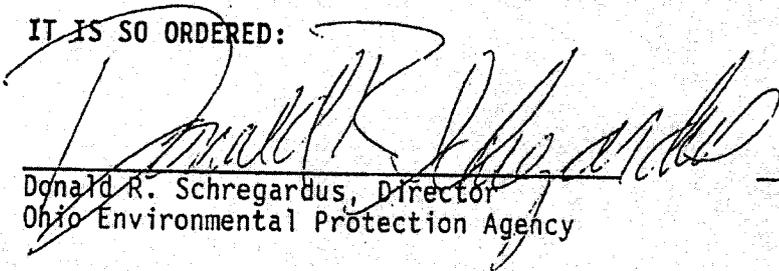
**XIII. TERMINATION**

The provisions of these Orders shall be terminated and satisfied upon the Respondent's demonstrating in writing, and certifying to the Ohio EPA's satisfaction, that all activities required under these Orders, including any additional tasks determined by the Ohio EPA to be necessary in accordance with these Orders and payment of all oversight costs, have been completed and that the Ohio EPA approves such certification in writing. Such certification approval by the Ohio EPA shall not terminate the terms, conditions, and the Respondent's obligation to comply with Article VII (other applicable laws) and Article XII (reservation of rights) of these Orders.

**XIV. SIGNATORIES**

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such signatory to this document.

IT IS SO ORDERED:

  
Donald R. Schregardus, Director  
Ohio Environmental Protection Agency

JUL 28 1993

Date

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By: Mary Gavin Date 7-28-93

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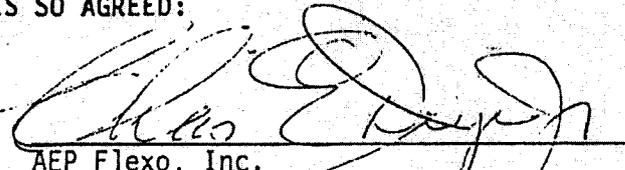
XIV. WAIVER AND AGREEMENT

In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent agrees that these Orders are lawful and reasonable, and agrees to perform all actions required by these Orders.

The Respondent hereby waives the right to appeal the issuance, terms and service of these Orders and hereby waives any and all rights it may have to seek judicial review of such Orders either in law or equity.

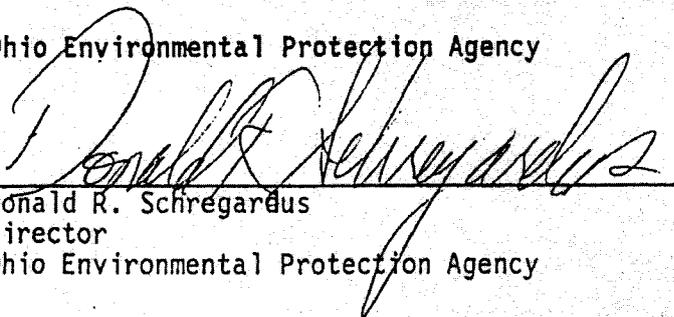
Notwithstanding the preceding, the Ohio EPA and Respondent agree that in the event that these Orders are appealed by any other party to the Environmental Board of Review, or any court, Respondent retains the right to intervene and participate in such appeal. In such event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

IT IS SO AGREED:

By:   
AEP Flexo, Inc.  
CHAS E. DEYE JR  
Typed or printed name  
PRESIDENT  
Title

July 13, 1993  
Date

Ohio Environmental Protection Agency

  
Donald R. Schregardus  
Director  
Ohio Environmental Protection Agency

JUL 28 1993  
Date

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By: Mary Carvin Date 7-28-93

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ATTACHMENT A

STATEMENT OF WORK (SOW) FOR CONDUCTING SOURCE CONTROL  
INTERIM ACTION(S) AT THE AEP FLENO SITE

PURPOSE:

The purpose of conducting the work described herein is to control the source(s) of ground-water contamination which have resulted from the disposal of industrial wastes, pollutants, other wastes, and/or hazardous wastes, constituents, and substances (contaminants) at the AEP Flexo site (the Site). Respondent(s) shall conduct a Focused Site Characterization (FSC) to characterize the source(s) of contaminant release at the Site, determine Site physical characteristics, develop cleanup goals, and obtain all other data necessary to design and implement the source control interim action(s) (SCLA(s)). Concurrent with the FSC, Respondent(s) shall evaluate potential SCLA(s), propose appropriate SCIA(s) for the Site, and prepare a conceptual design of the proposed SCIA(s). Following Ohio EPA approval of the proposed SCIA(s), Respondent(s) shall design and implement the approved SCIA(s), and operate, maintain and monitor the constructed system(s). Successful completion of the required work will result in the elimination of identified sources of contaminant releases and control of identified pathways of contaminant migration. The FSC and conceptual design of the proposed SCIA(s) are interactive and are to be conducted concurrently so that the data collected during the FSC influences the evaluation of and the conceptual design of the proposed SCLA(s).

Respondent(s) shall conduct all required activities and provide all required deliverables in accordance with the Director's Final Findings and Orders (Orders) and this SOW. Respondent(s) shall furnish all necessary personnel, materials, and services needed, or incidental to, performing the activities described in this statement of work.

Respondent(s) shall obtain all site access agreements required to perform the work outlined in this SOW. Site access shall extend for the duration of the project and shall include allowances for all operation and maintenance considerations.

At the completion of the FSC, the Ohio EPA will approve or modify as appropriate Respondent(s)' proposed SCLA(s). To obtain Ohio EPA approval, proposed SCIA(s) must at a minimum protect human health and the environment, comply with the requirements of federal, state and local laws and regulations, minimize cross-media transfer of contaminants and utilize permanent solutions to the maximum extent practicable.

TASKS:

1. Develop Workplan;
2. Conduct field investigations to characterize contaminant source(s) and obtain all data necessary to evaluate, select and design SCIA(s); and
3. Design and implement SCIA(s).

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**DELIVERABLES:**

1. Workplan
  2. Focused Site Characterization and Conceptual Design Report
  3. Detailed Plans and Specifications for SCLA(s)
  4. Operation, Maintenance and Monitoring Plans for SCLA(s)
  5. Monthly progress reports
- 1.0 DEVELOP WORK PLANS

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JUL 26 93  
STATE DIRECTOR'S OFFICE

Respondent(s) shall submit a FSC Workplan (Workplan), a sampling and analysis plan (SAP) consisting of a field sampling plan (FSP) and a quality assurance project plan (QAPP), and a Site health and safety plan (HSP). The Workplan and supporting documents must be approved by Ohio EPA prior to the initiation of field activities.

1.1 FSC Workplan

The Workplan shall be developed in conjunction with the SAP and the HSP although each plan may be submitted under separate cover. The Workplan shall include the supporting rationale for performing each task in the manner described. The Workplan shall describe in detail all tasks necessary to perform the work required by this SOW, including materials and procedures required for each task, and work products to be submitted to the Ohio EPA. This includes deliverables as required by the Orders and this SOW, and meetings with Ohio EPA. The Workplan shall provide fixed date schedules for accomplishing the required work.

The Workplan shall clearly state the objectives of the FSC, identify actual or potential threats to human health and the environment posed by the Site, and identify preliminary cleanup goals for those contaminants previously identified at the Site. Based on review of existing information, Respondent(s) shall include in the Workplan a summary of the Site background including geographic location, and describe Site physiography, hydrology, geology, and history with regard to the use, storage and disposal of contaminants. The Workplan shall describe any previous response actions conducted by local, state, federal, or private parties; provide a summary of existing data in terms of physical and chemical characteristics of identified contaminants, describe their distribution among the environmental media; and demonstrate compliance with federal, state and local laws and regulations which apply to the work to be performed. The Workplan shall identify potential SCIA(s) which shall address each media of interest, identifying treatment, excavation, pumping, or other actions, either singly or in combination, to satisfy interim action objectives. Data collection activities necessary to evaluate potential SCIA(s) shall be identified. Following Ohio EPA approval of the Workplan and supporting documents, Respondent(s) shall implement the work in accordance with the schedules described therein.

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By: Mary Carvin Date 7-28-93

In performing the work required by this SOW, Respondent(s) may rely upon data and/or information gathered from other sources to the extent that Respondent(s) can demonstrate that QA/QC procedures acceptable to Ohio EPA were followed in the generation and presentation of the data and/or information. Respondent(s) shall include all supporting documentation in the Workplan for all data and/or information gathered from other sources and clearly identify the intended use(s) for such data and/or information. Ohio EPA will evaluate the adequacy of supporting QA/QC documentation and determine the acceptability of all data and/or information gathered from other sources during review of the draft Workplan.

If the need for additional work is identified at any time during the performance of the work required by this SOW, Respondent(s) shall submit a Workplan amendment with schedule documenting the need for the additional work and describing in detail the tasks to be performed. Respondent(s) shall be responsible for completing any additional work approved or required by the Ohio EPA in a manner consistent with the purpose and objectives of this Statement Of Work.

## 1.2 Sampling and Analysis Plan

Respondent(s) shall prepare a SAP consisting of the following:

### A. *Field Sampling Plan*

The FSP shall specify and detail all activities necessary to obtain Site data. It shall explain what additional data are required to adequately characterize the Site and support the evaluation of potential SCIA(s). The FSP shall describe sampling objectives; equipment and procedures; sample types, locations, and frequencies; and parameters of interest; and shall be tied to the schedules contained in the Workplan.

### B. *Quality Assurance Project Plan*

The QAPP shall address all investigations to be conducted at the Site and shall include the following:

1. A project description;
2. Analytical methods and laboratory procedures;
3. Quality assurance objectives for data such as the required precision and accuracy, completeness of data, representativeness of data, comparability of data, and the intended use of collected data;
4. Chain of custody procedures during sample collection and in the laboratory;
5. The type and frequency of calibration procedures during sample collection and in the laboratory;

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6. Preventative maintenance procedures and schedule and corrective action procedures for field and laboratory instruments;
7. Specific procedures to assess data precision, representativeness, comparability, accuracy, and completeness of specific measurement parameters; and
8. Data documentation and tracking procedures.

C. *Health and Safety Plan*

Respondent(s) shall submit an HSP which shall comply with the requirements of applicable federal, state, and local laws. The HSP shall be consistent with:

1. NIOSH Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities (1985);
2. Section 111(c)(6) of CERCLA;
3. U.S. EPA Order 1440.3 -- Respiratory Protection;
4. U.S. EPA Occupational Health and Safety Manual;
5. U.S. EPA Interim Standard Operating Safety Procedures and other U.S. EPA guidance as developed;
6. OSHA regulations, particularly in 29 CFR 1910 and 1926;
7. State and local regulations; and
8. Site or facility conditions.

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The HSP shall identify problems or hazards that may be encountered and their solution. Safety procedures to be followed to protect third parties, such as visitors or the surrounding community, including monitoring, shall also be provided.

2.0 **SITE INVESTIGATION AND CONCEPTUAL DESIGN**

Respondent(s) shall collect data on the physical characteristics of the Site to the extent necessary to define potential contaminant transport pathways and provide sufficient engineering data for screening and selecting proposed SCIA(s). Respondent(s) shall screen the potential SCIA(s) identified in the Workplan concurrent with the Site characterization tasks.

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By: Mary Carvin Date 7-28-93

## 2.1 Hydrogeology

Respondent(s) shall perform a Site-wide hydrogeologic study to evaluate the subsurface geology and water bearing formations, and to characterize ground-water contamination. The study shall determine the location of water bearing formations, confining layers, bedrock, and other subsurface geologic features, and shall support the determination of the vertical and horizontal distribution of source contaminants. Efforts shall begin with a survey of previous hydrogeologic studies and other existing data.

A detailed technical description of all methods to be used in gathering data for this task shall be included in the Workplan. This shall include a diagrammatic representation of proposed monitoring well and piezometer locations, monitoring well and piezometer design and construction, information on construction materials, drilling techniques, and well development methods.

The hydrogeologic investigation shall provide the following information for the Site:

- A. A representative and accurate classification and description of the hydrogeologic units which may be part of contaminant migration pathways (i.e., the aquifers and any intervening saturated and unsaturated units), including but not limited to:
1. Hydraulic conductivity (vertical and horizontal) and porosity (total and effective);
  2. Storativity and transmissivity;
  3. Lithology, grain size, sorting, and degree of cementation;
  4. A determination of hydraulic interconnections between saturated zones; and
  5. The retardation capacity and mechanisms of the natural earth materials (e.g., organic carbon content, clay content, etc.).
- B. Hydrogeologic cross-sections showing the extent (depth, thickness, lateral extent) of hydrogeologic units which may be part of the contaminant migration pathways, identifying:
1. Sand, gravel, and other unconsolidated deposits;
  2. Zones of higher or lower permeability that might direct and restrict the flow of contaminants;
  3. Aquifers: geologic formations, groups of formations, or parts of formations capable of yielding usable amounts of ground water to wells or springs; and
  4. Water-bearing zones that may serve as a pathway for contaminant migration including perched zones of saturation.

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By: Mary Cavin Date 7 28 93

- C. A representative description of water level or fluid pressure monitoring including:
1. Potentiometric surface maps;
  2. Hydrogeologic cross sections showing vertical gradients and interconnection between water bearing strata; and
  3. Temporal changes in hydraulic gradients and flow directions.
- D. A description of man-made influences that may affect the hydrogeology of the Site identifying:
1. Active and inactive local water supply and production wells with an approximate schedule of pumping; and
  2. Man-made hydraulic structures (pipe-lines, french drains, ditches, unlined ponds, septic tanks, wastewater outfalls, retention areas, utility lines, etc.).

Respondent(s) shall document the procedures used in making the above determinations.

### 2.2 Soil and Sediments Investigations

Respondent(s) shall conduct a program to characterize the soil and unconsolidated deposits in the vicinity of the contaminant release(s). This process may overlap with certain aspects of the hydrogeologic study (e.g., characteristics of soil strata are relevant to both the transport of contaminants by ground water and to the locations of contaminants in the soil). A survey of existing data on soils and sediments may be useful. The characterization shall include as appropriate the following information:

- A. Soil classification using the Unified Soil Classification System;
- B. Surface soil distribution;
- C. Soil profile, including ASTM classification of soils;
- D. Transects of soil stratigraphy;
- E. Hydraulic conductivity;
- F. Relative permeability;
- G. Bulk density;
- H. Porosity;
- I. Soil sorptive capacity;
- J. Soil organic content;

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By: Mary Carvin Date 7-28-93

OHIO E.P.A.

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INTERIOR DIRECTOR'S JOURNAL

- K. Particle size distribution;
- L. Depth to water table;
- M. Moisture content;
- N. Effect of stratification on unsaturated flow;
- O. Infiltration rate; and
- P. Storage capacity.

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Respondent(s) shall document the procedures used in making the above determinations.

2.3 Contamination Characterization

Respondent(s) shall identify and characterize contamination of Site ground water and soils. Data collected shall be sufficient to define the magnitude, origin, direction, and rate of contaminant migration.

A. Ground-water Contamination

Respondent(s) shall conduct an investigation to characterize ground-water contamination to the extent necessary to characterize contaminant sources and obtain design data. The investigation shall at a minimum provide the following information:

1. A characterization of any immiscible or dissolved contaminant plume(s) originating from the Site including non-aqueous phase liquids (free product);
2. An estimate of aquifer transverse and longitudinal dispersivity;
3. The velocity of contaminant movement;
4. The horizontal and vertical concentration profiles of contaminants in identified plumes;
5. An evaluation of factors influencing contaminant movement; and
6. Background contaminant concentrations in areas upgradient of and unaffected by Site-related contaminant source(s).

Respondent(s) shall follow the guidance identified in the Orders for well design, construction, development, purging, sampling, geophysics, modeling, etc. and shall document the procedures used in making the above determinations.

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By: Mary Cain Date 7-28-93

B. Soil Contamination

Respondent(s) shall conduct an investigation to characterize surface and subsurface soil contamination at the Site. The investigation shall be designed to collect the following information:

1. The vertical and horizontal concentration profiles of contaminants in Site soils;
2. A description of soil chemical properties which might affect contaminant migration and transformation;
3. Identification of contaminants present;
4. Background soil contaminant concentrations in areas unaffected by Site-related contaminant source(s).

2.4 Refine and Develop Cleanup Goals and Design Criteria

Respondent(s) shall refine the cleanup goals previously identified in the Workplan. Cleanup goals shall be developed and refined in accordance with the guidance documents identified in the Orders. Volumes or areas of media to which potential SCIA(s) apply shall be identified, taking into account the chemical and physical characteristics of the Site and the requirements for protectiveness as identified in the refined cleanup goals.

Using the Freundlich Equation with Site specific data, Respondent(s) shall estimate the volume of water moving vertically and horizontally through contaminated media so as to determine unsaturated soil organic contaminant cleanup goals. The objective shall be to establish SCIA design criteria for soils which will be protective of ground water and not elevate ground-water organic contaminant levels above ground-water cleanup goals. Unsaturated soil organic contaminant cleanup goals shall be calculated for each individual organic contaminant of concern.

2.5 Site Characterization Report

Respondent(s) shall summarize all investigations and their results to ensure that the investigation data are sufficient in quality and quantity to describe the nature and extent of identified source(s) of contamination, define contaminant transport mechanisms, and support the selection and design of the proposed SCIA(s). Any data gaps shall be identified and their impact upon the work shall be fully described. The analysis and summary shall be presented in a written report which shall at a minimum include the following:

A. Data on Site physical characteristics (soils, geology, hydrogeology, etc.)

B. Data on source characteristics describing:

1. The source location;

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2. The type and integrity of any existing waste containment; and
  3. A description of the vertical and horizontal extent of contamination in the source area (quantity of contaminated source media).
- C. Data on the nature and extent of contamination within the source area.
- D. Cleanup goals and supporting calculations for all contaminated media.

2.6 Conceptual Design of Respondent(s)' proposed SCIA(s)

Using data generated during the FSC, Respondent(s) shall evaluate the potential SCIA(s) identified in the FSC Workplan for applicability to Site problems and recommend a proposed SCIA(s) for implementation at the Site. Respondent(s) shall include a technical description of each component of the proposed SCIA(s) outlining the waste management strategy involved and identifying regulatory requirements and cleanup goals. The Conceptual Design shall include discussion of the evaluation of the potential SCIA(s) and shall be included as part of or submitted concurrently with the Site Characterization Report. The Conceptual Design shall include but not be limited to the following:

- A. A narrative description of the proposed SCIA(s);
- B. Schematic drawings of treatment processes;
- C. A description of how treatment, storage, and disposal of contaminated media will comply with federal, state and local laws and regulations;
- D. Supporting data and documentation defining the functional aspects of the SCIA(s);
- E. Design calculations including removal and destruction efficiencies for all SCIA components (treatment works, extraction wells, vadose gases extraction networks, etc.);
- F. A Site map showing the location of all SCIA components and significant Site features;
- G. A schedule for submittal of detailed plans and specifications including any required permit applications, initiation and completion of construction, attainment of operational level; and initiation of operation, maintenance, and monitoring; and
- H. Identification and assessment of all applicable regulatory requirements pertaining to the proposed SCIA(s) including:
  1. Identification of permitting authorities,
  2. Required construction/operation permits,
  3. Time required by permitting authorities to process applications,

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By: *Marc Casin* Date: *7 18 97*

4. Monitoring and/or compliance testing requirements, and
5. Reporting requirements.

I. Monitoring requirements to verify system effectiveness.

Factors considered by Ohio EPA in approval of proposed SCIA(s) include but are not limited to the following:

- A. Time required for implementation;
- B. Time required to achieve protection of human health and the environment;
- C. Compliance with federal, state and local laws and regulations;
- D. Performance efficiencies;
- E. Use of treatment technologies which significantly reduce toxicity, mobility, and volume of contaminants;
- F. Ability to minimize or eliminate cross-media transfer of contaminants;
- G. Ability to verify SCIA(s) effectiveness;
- H. Frequency of routine maintenance and component replacement;
- I. Degree of permanence; and
- J. Degree of contribution to the efficient performance of any anticipated long-term remedial action(s).

3.0 DESIGN/IMPLEMENTATION (D/I)

The purpose of D/I is to design and implement the approved SCIA(s) in order to protect the human health and the environment.

3.1 Detailed Plans and Specifications

Detailed plans and specifications for the approved SCIA(s) shall be submitted in accordance with the timetable contained in the Ohio EPA-approved Conceptual Design. The detailed plans and specifications shall include but not be limited to final construction drawings, specifications, plans, and design analyses with supporting calculations. Applications for any required permits shall be submitted simultaneously with the detailed plans and specifications. Following Ohio EPA approval of the detailed plans and specifications and receipt of any necessary construction permits, *Respondent* shall initiate construction of the approved SCIA(s) in accordance with the approved schedules contained in the Conceptual Design.

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A-10 By: Mary Carvin Date 7-28-93

### 3.2 Operation and Maintenance (O&M) Plan

An O&M plan shall be submitted to Ohio EPA prior to the completion of construction. Appropriate elements are listed in Exhibit 1. Plan elements listed in Exhibit 1 are for illustrative purposes and should not limit the content of the O&M plan.

### 3.3 Design Changes During Construction

During construction, unforeseen Site conditions, changes in estimated quantities, and other problems associated with the project may require either major or minor changes to the approved design. Design changes require prior approval of Ohio EPA and may require modification of permit(s) to install to ensure that the intent and scope of the approved SCIA(s) is maintained. Changes to the SCIA(s) design which require Ohio EPA approval prior to implementation include:

- A. Those which involve the deletion or addition of a major component of the approved SCIA(s) (e.g. changing one treatment system for another, deleting any designed layer of a multilayer cap);
- B. Those which result in a less effective treatment for wastes associated with the Site;
- C. Any changes which may result in an increased exposure to Site contaminants and/or risk to human health or the environment;
- D. Those which result in a significant delay in the completion of the SCIA(s); and
- E. Any other changes which alter the scope or objectives of the approved SCIA(s).

### 3.4 Construction Completion

As the construction of the SCIA(s) nears completion, the following activities shall be completed by Respondent(s) to ensure proper construction completion and transition to the O&M phase.

#### A. *SCIA(s) Construction Report and Certification*

A SCIA(s) Construction Report (CR) shall be prepared and submitted by Respondent(s) within 30 days of completion of construction and in accordance with the schedule contained in the Conceptual Design. The CR report shall include the following:

1. A synopsis of the construction work defined in the detailed plans and specifications and certification that this work was performed;
2. An explanation of any modifications to the work defined in the detailed plans and specifications and why they were necessary for the project; and
3. Certification that the constructed SCIA(s) is operational and functional and constructed according to the approved plans and specifications.

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By: Mary Casin Date 7 93

EXHIBIT 1

Basic Elements of an Operation and Maintenance (O&M) Plan

- A. Normal O&M
  - 1. Description of tasks for operation
  - 2. Description of tasks for maintenance
  - 3. Description of prescribed treatment or operating conditions
  - 4. Schedules showing the frequency of each O&M task
- B. Potential Operating Problems
  - 1. Description and analysis of potential operating problems
  - 2. Sources of information regarding potential operating problems
  - 3. Description of means of detecting problems in the operating systems
  - 4. Common remedies for operating problems
- C. Routine Monitoring and Laboratory Testing
  - 1. Description of monitoring tasks
  - 2. Description of required laboratory tests and interpretation of test results
  - 3. Required QA/QC procedures
  - 4. Monitoring schedule
- D. Alternative O&M
  - 1. Description of alternate procedures to prevent undue hazard, should systems fail
  - 2. Vulnerability analysis and additional resources requirements should a failure occur
- E. Safety Plan
  - 1. Description of safety procedures, necessary equipment, etc. for site personnel
  - 2. Description of safety tasks required in the event of systems failure
- F. Equipment
  - 1. Description of equipment necessary to the O&M Plan
  - 2. Description of installation of monitoring components
  - 3. Description of maintenance of site equipment
  - 4. Replacement schedule for equipment and installed components
- G. Records and Reporting Mechanisms Required
  - 1. Daily operating logs
  - 2. Laboratory records
  - 3. Mechanism for reporting emergencies
  - 4. Personnel and maintenance records
  - 5. Monthly reports to Ohio EPA

OHIO E.P.A.

JUL 20 1992

OPERATIONS DIRECTOR'S OFFICE

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A-12

By: *M. J. ...* 7 20 92

EXHIBIT 2

METHOD TO CALCULATE SOIL CLEANUP GOALS  
USING THE FREUNDLICH EQUATION

This document outlines a method using the Freundlich equation for establishing soil cleanup goals at hazardous waste sites where threats to ground water resources exist. The method is designed for use with organic compounds and will predict dry soil contaminant concentrations which will prevent ground-water contaminant levels from exceeding ground-water cleanup goals. A dry soil contaminant goal can be calculated for each contaminant of concern.

The method consists of two steps. In step 1, the maximum equilibrium soil water concentration for the contaminant of concern is calculated by setting the contaminant concentration in the top 10 feet of the aquifer beneath the contaminated portion of the site to the ground water cleanup goal, estimating the vertical and horizontal components of ground-water flow, and determining by mass balance calculations the maximum mass and concentration of contaminant which can be transported via vertical ground-water flow to ground water flowing horizontally beneath the site.

In step 2, a batch adsorption technique is used to assess the ability of on-site soils to remove contaminants from solution. An aqueous solution containing solutes of known composition and concentration is mixed with a given mass of adsorbent and allowed to equilibrate. The solution is separated from the adsorbent and analyzed to determine changes in chemical composition. The amount of solute adsorbed is assumed to be the difference between the initial concentration and the solute concentration after the mixing period. The results of the batch adsorption experiment are graphed and the Freundlich adsorption equation for the resulting line segment is derived. The Freundlich isotherm or curve is then used to determine how the solute will partition between soil and water.

The value for the maximum equilibrium soil water concentration for the contaminant of concern can be inserted into the Freundlich equation derived during step 2 to determine the maximum dry soil contaminant concentration.

Step 1. Calculate maximum equilibrium soil-water concentration for contaminant.

A simple ground-water flow model is constructed for the site. Assumptions of the model include:

- a. Darcy's Law,  $q = -K dh/dl$ , is valid  
where  $q$  = specific discharge  
 $K$  = hydraulic conductivity  
 $dh/dl$  = hydraulic gradient
- b. Hydraulic conductivity in top 10 feet of aquifer is homogeneous and isotropic
- c. Uniform hydraulic gradient beneath site

The following steps are required to construct the model.

1. Measure the lateral source length perpendicular to the direction of ground-water flow.
2. Using Darcy's Law, calculate the lateral ground-water flow in the top ten feet of the aquifer beneath the contaminated portion of the site.

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Environmental Protection Agency.

By: Mary Carvin Date 7-28-93

3. Calculate the maximum mass of contaminant that can leave site (ground-water quality goal times yearly flux).
4. Measure the surface area of the contaminated portion of the site.
5. Calculate the infiltration rate through the contaminated portion of the site using the U.S.EPA Help Model.
6. Assuming the upgradient ground water contaminant concentration = 0, calculate the maximum concentration of the contaminant in the equilibrium soil water which can be transported via infiltration to ground water passing beneath the site such that the ground-water contaminant level will not exceed the ground-water cleanup goal.

Step 2. Assess ability of on-site soils to remove contaminants from solution.

1. Determine a suitable batch-type laboratory procedure for determining soil adsorption of contaminants. See EPA/530-SW-87-006-F: *Batch-Type Procedures for Estimating Soil Adsorption of Chemicals* (USEPA, 1992).
2. Construct adsorption isotherm by conducting batch experiments and determining amount of solute adsorbed per mass of adsorbent by

$$x/m = (C_0 - C)(V)/m$$

where  $x/m$  = amount of solute adsorbed per unit mass of adsorbent,  
 $m$  = mass of adsorbent added to reaction chamber  
 $C_0$  = initial solute concentration before exposure to adsorbent  
 $C$  = solute concentration after exposure to adsorbent, and  
 $V$  = volume of solute solution added to reaction container.

The isotherm is constructed by plotting equilibrium concentration ( $C$ ) or  $\log C$  on the x axis and the corresponding  $x/m$  or  $\log x/m$  on the y axis. The linear expression of the Freundlich equation is

$$\log (x/m) = \log K_f + 1/n \log C$$

where  $x/m$  = amount of solute adsorbed per unit mass of adsorbent,  
 $K_f$  = a constant  
 $1/n$  = a constant, and  
 $C$  = solute concentration after exposure to adsorbent.

A linear regression can be used to fit a curve through the adsorption isotherm where the intercept equals  $K_f$  and the slope equals  $1/n$ . The value for  $C$  calculated in Step 1 can be plotted on the isotherm in order to determine the corresponding value for  $x/m$ , the soil cleanup goal.

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By: Mary Carvin Date 7-27-93

OHIO ENVIRONMENTAL PROTECTION AGENCY  
 JUL 28 1993  
 REGIONAL DIRECTOR'S OFFICE

ATTACHMENT B

GUIDANCE DOCUMENTS FOR THE DEVELOPMENT  
OF THE WORKPLAN

- a) *RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)*, OSWER Directive 9950.1, September, 1986.
- b) *Risk Assessment Guidance for Superfund: Volume I - Human Health: Evaluation Manual (Part B), Development of Risk-based Preliminary Remediation Goals*. OSWER Directive 9285.7-01B, December, 1991, Interim.
- c) *Guidelines and Specifications for Preparing Quality Assurance Project Plans*, Ohio EPA, Division of Emergency and Remedial Response, Policy No. DERR-00-RR-008.
- d) *Batch-Type Procedures for Estimating Soil Adsorption of Chemicals*, U.S.EPA, EPA/530/SW-87/006-F, April, 1992.

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By: Mary Carvin Date 7-28-93

INDEXED

JUL 28 1993

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Workplan or revised draft required document, other than the revised Focused Site Characterization/Conceptual Design Report which is governed by the provisions of paragraph F of this Article, to Ohio EPA within thirty (30) days of receipt of Ohio EPA's comments demonstrating the incorporation of Ohio EPA's comments. Following receipt by Ohio EPA of the revised draft Workplan or revised draft document, other than the revised Focused Site Characterization/Conceptual Design Report which is governed by the provisions of paragraph F of this Article, the Ohio EPA will either approve or disapprove, in writing, the draft Workplan or draft required document. Article IX of these Orders shall apply should a dispute arise between the Ohio EPA and Respondent under Article IV, paragraph C, of these Orders.

SECTION C

Article IV, Work to be Performed, is modified to include the following new paragraph F:

F. On August 12, 1994, Respondent submitted a draft Focused Site Characterization/Conceptual Design Report to the Ohio EPA for review and comment. Respondent shall submit a revised Focused Site Characterization/Conceptual Design Report to the Ohio EPA that incorporates the requirements of sub-sections 1 through 4 of this paragraph F by October 18, 1996. Following receipt by the Ohio EPA of the revised Focused Site Characterization/Conceptual Design Report, the Ohio EPA will

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By: Kara Goble Date 10/10/96

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either approve or disapprove, in writing, the revised Focused Site Characterization/Conceptual Design Report. The revised Focused Site Characterization/Conceptual Design Report shall incorporate the following requirements:

1. Ground Water Cleanup Goal. The maximum contaminant level (MCL) for tetrachloroethylene (PCE) may be used as the ground water cleanup goal for PCE; provided that, no other contaminants are detected at the Site during monitoring of the source control interim action (SCIA). If other contaminants are detected, Respondent shall develop alternative cleanup goals for both PCE and the other detected contaminants in accordance with the NCP.

2. Operation of the SCIA. Respondent will perform a short-term pilot test to acquire data to design and implement the full scale SCIA. Air controls will be utilized to eliminate or minimize, to the degree possible, the cross-media transfer of contaminants during the operation of the pilot test and the SCIA.

Respondent will operate the SCIA to attempt to reach the ground water cleanup goal. If the cleanup goal is achieved, Respondent will resample the ground water approximately one week after initially achieving the ground water cleanup goal to verify that the cleanup goal has been achieved. If this resampling reaffirms that the cleanup goal has been achieved, then the SCIA will be shut-down, and Respondent will monitor the ground water quarterly

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By: Kara Foster Date 10/10/96

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for eight consecutive quarters to ensure that the cleanup goal continues to be met.

If the ground water cleanup goal is not achieved initially, or if the quarterly monitoring indicates that the cleanup goal is not being maintained, then Respondent will perform technology enhancements to the SCIA. These technology enhancements could involve more than minor operational modifications, but would not involve large-scale modifications to the SCIA. The use of ozone as a sparge gas to enhance the destruction of PCE in ground water would be an example of a potential modification that would be acceptable.

If the ground water cleanup goal is achieved after the technology enhancements have been performed, Respondent will resample the ground water approximately one week after achieving the ground water cleanup goal to verify the cleanup goal has been achieved. If this resampling reaffirms that the ground water cleanup goal has been achieved, then the SCIA will be shut down, and Respondent will monitor the ground water quarterly for eight consecutive quarters to ensure that the cleanup goal continues to be met. If the quarterly monitoring indicates that the cleanup goal is not being maintained, Respondent will perform additional technology enhancements or seek to demonstrate to the Ohio EPA's satisfaction, pursuant to the procedures of paragraph F.4. of Article IV, Work to be Performed, that achievement of the ground water cleanup goal is technically infeasible.

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By: Karalyn Date 10/10/96

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If the ground water cleanup goal is not achieved after the technology enhancements have been performed and the Ohio EPA determines pursuant to the procedures of paragraph F.4. of Article IV, Work to be Performed, that achievement of the cleanup goal is technically infeasible, Respondent will be required to perform quarterly ground water sampling for eight consecutive quarters. If ground water samples collected during quarterly sampling do not exhibit any statistically significant or consistent rebound in contaminant concentrations, Respondent may submit a certification, pursuant to Article XIII, Termination, for termination of these Orders.

3. Containment Options. Containment options, including pump/treat, hydraulic containment, cap/covers, and slurry walls will not be required to be implemented under these Orders. However, in addition to the reservations of rights contained in other Articles of these Orders, the Ohio EPA specifically reserves the right under any applicable legal authority to investigate and implement the use of containments options as a result of conditions at the Site. In addition, the Ohio EPA reserves the right under any applicable legal authority to require Respondent to investigate and implement containment options as a result of conditions at the Site. The termination of these Orders pursuant to Article XIII shall not affect these reservations of rights.

4. Technical Infeasibility. Respondent may seek to

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By: Kara G. Decker Date 10/10/96

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demonstrate to the Ohio EPA's satisfaction that achievement of the ground water cleanup goal for PCE, or alternate cleanup goals, is technically infeasible. Ohio EPA will not consider such a claim until the following conditions have been met by Respondent:

a. Operational variations in the SCIA have been implemented to enhance system performance and to determine that ground water concentrations of PCE, or other detected compounds, are approaching equilibrium (asymptotic) levels. These operational variations must include, but are not limited to, pulsed injection/flow rates, variation of injection/flow rates and zonal operation of the air sparging and soil vapor extraction system.

b. Modular changes in the SCIA have been evaluated with respect to their potential to achieve the established cleanup goal in a reasonable period of time and have been implemented if practicable. These changes may include the addition of ozone generators or other components to the existing SCIA that would enhance the destruction or volatilization of contaminants in soil and ground water.

c. Limited, confirmatory steady-state ground water samples indicate that asymptotic conditions exist.

After these conditions have been met by Respondent, Ohio EPA will

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By: Karayden Date 10/10/96

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consider Respondent's claim that achievement of the established cleanup goal is technically infeasible. Ohio EPA will require Respondent to provide sound, widely-accepted scientific and statistical evidence to show that the established ground water cleanup goal for PCE, or other detected compounds, cannot be attained. Respondent will also be required to demonstrate to the Ohio EPA's satisfaction that further reductions in contaminant concentration cannot be achieved in a reasonable period of time.

If Ohio EPA agrees with Respondent's assertion of technical infeasibility, Respondent will be required to perform quarterly ground water sampling for eight consecutive quarters. If ground water samples collected during quarterly sampling do not exhibit any statistically significant or consistent rebound in contaminant concentrations, Respondent may submit a certification, pursuant to Article XIII, Termination, for termination of these Orders.

If the Ohio EPA disagrees with Respondent's assertion of technical infeasibility, Respondent may seek to invoke dispute resolution procedures under Article IX, Dispute Resolution. The provisions of that Article shall apply to the dispute; except that, the seven (7) day time periods of paragraphs B and C of Article IX shall be lengthened to fourteen (14) days. All other provisions of Article IX, Dispute Resolution, shall remain the same.

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By: Karal Jones Date 10/10/96

OHIO E.P.A.

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SECTION D

Article X, Reimbursement of Costs, is modified to label the existing paragraph of Article X as paragraph A. Article X, Reimbursement of Costs, is also modified to include the following new paragraph B:

B. Respondent owes the Ohio EPA \$48,279.85 for oversight and response costs incurred during calendar year 1995. Respondent shall reimburse the Ohio EPA for these costs in the following manner:

1. Respondent shall pay the Ohio EPA \$9,291.78 before December 1, 1996;

2. Respondent shall pay the Ohio EPA the remaining amount owed for oversight and response costs incurred during calendar year 1995, \$38,988.07, in accordance with the following procedures:

a. Respondent shall include in its monthly report a description of the technology enhancements performed during the previous month, the expense of such enhancements, and the expense of operating and maintaining the air control system once the influent to air controls drops below ten (10) pounds of contaminants per day. If requested by the Ohio EPA, Respondent shall provide documentation to support the claimed expenses

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By: Kara J. [Signature] Date 10/10/96

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within ten (10) days of receipt of the request.

b. Respondent shall deduct from the remaining amount owed for oversight and response costs incurred during calendar year 1995, \$38,988.07, allowable credits. If the ground water cleanup goal is achieved without the use of technology enhancements, allowable credits are limited to non-capital expenses associated with the operation and maintenance of the air emission control system, excluding labor expenses, once the influent to air control drops below ten (10) pounds of contaminants per day.

If the ground water cleanup goal is achieved with the use of technology enhancements, or if the Ohio EPA determines that the attainment of the ground water cleanup goal is technically infeasible, allowable credits are limited to the capital costs of the technology enhancements and to non-capital expenses associated with the operation and maintenance of the air emission control system, excluding labor expenses, once the influent to air control drops below ten (10) pounds of contaminants per day.

c. Respondent shall pay the Ohio EPA the remaining amount of \$38,988.07, minus any allowable credits, within thirty (30) days of either the achievement of the ground water cleanup goal or the Ohio EPA's determination of technical infeasibility.

3. Payments made to the Ohio EPA pursuant to this paragraph B, shall be made in the form of a certified check

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Kara [Signature] Date 10/10/96

OHIO E.P.A.

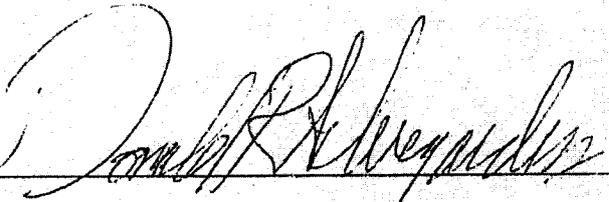
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ENTERED DIRECTOR'S JOURNAL

payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, 1800 Watermark Drive, Columbus, Ohio 43266-1049, ATTN: Edith Long. A copy of the transmittal letter and check shall be sent to Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 1800 Watermark Drive, Columbus, Ohio 43266-1049, ATTN: Pat Campbell, and to the Ohio EPA Site Coordinator.

4. This paragraph B of Article X, Reimbursement of Costs, establishes procedures only for the oversight and response costs incurred by the Ohio EPA during the calendar year 1995. Respondent's obligation to reimburse the Ohio EPA for oversight and response costs incurred during other time periods remains unchanged.

IT IS SO ORDERED:

  
Donald R. Schregardus, Director  
Ohio Environmental Protection Agency

OCT 10 1996

Date

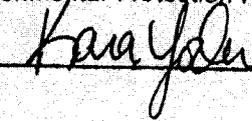
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ENTERE

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by:  Date 10/10/96

WAIVER AND AGREEMENT

In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent hereby agrees that this Modification of Director's Final Findings and Orders is lawful and reasonable, and agrees to perform all actions required by this Modification of Director's Final Findings and Orders.

The Respondent hereby waives the right to appeal the issuance, terms and service of this Modification of Director's Final Findings and Orders and hereby waives any rights it may have to seek judicial review of such Modification of Director's Final Findings and Orders either in law or equity.

Notwithstanding the preceding, the Ohio EPA and Respondent agree that in the event that this Modification of Director's Final Findings and Orders is appealed by any other party to the Environmental Board of Review, or any court, Respondent retains the right to intervene and participate in such appeal. In such event, Respondent shall continue to comply with this Modification of Director's Final Findings and Orders notwithstanding such appeal and intervention unless this Modification of Director's Final Findings and Orders is stayed, vacated or modified.

OHIO E.P.A.

IT IS SO AGREED:

OCT 10 96

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I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By:

*Karalyn*

Date

10/10/96

By: Chas E Deye  
AEP Flexo, Inc.

9/16/96  
Date

CHAS E. DEYE JR  
Typed or printed name

President  
Title

Ohio Environmental Protection Agency

1 Donald R. Schregardus  
Director

Ohio Environmental Protection Agency

OCT 10 1996  
Date

OHIO E.P.A.

OCT 10 96

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I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Karalyn Date 10/10/96

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In The Matter of

AEP Flexo, Inc.  
200 Benham Street  
Dayton, Kentucky 41074

Respondent

:  
:  
:  
:  
:  
:  
:

MODIFICATION OF  
DIRECTOR'S FINAL  
FINDINGS & ORDERS

It is hereby agreed to by the Parties as follows:

SECTION A

On July 28, 1993, Director's Final Findings and Orders were journalized in the matter of AEP Flexo, Inc., 200 Benham Street, Dayton, Kentucky 41074, as Respondent. On October 10, 1996, the Director's Final Findings and Orders of July 28, 1993 were amended through the issuance of a Modification of Director's Final Findings and Orders. All provisions of the Director's Final Findings and Orders of July 28, 1993, as amended by the October 10, 1996 Modification of Director's Final Findings and Orders, remain unchanged and in full effect except for the modification listed below.

SECTION B

Paragraph F.4. of Article IV, Work to be Performed, contains the  
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official document as filed in the records of the Ohio  
Environmental Protection Agency.

By: *Wanda Under*

Date: *12/4/96*

following subparagraph:

If Ohio EPA agrees with Respondent's assertion of technical infeasibility, Respondent will be required to perform quarterly ground water sampling for eight consecutive quarters. If ground water samples collected during quarterly sampling do not exhibit any statistically significant or consistent rebound in contaminant concentrations, Respondent may submit a certification, pursuant to Article XIII, Termination, for termination of these Orders.

This subparagraph is modified to include the phrase "then the SCIA will be shut down and" so that the subparagraph now reads as follows:

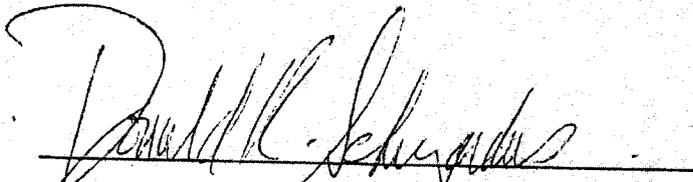
If the Ohio EPA agrees with Respondent's assertion of technical infeasibility, then the SCIA will be shut down and Respondent will be required to perform quarterly ground water sampling for eight consecutive quarters. If ground water samples collected during quarterly sampling do not exhibit any statistically significant or consistent rebound in contaminant concentrations, Respondent may submit a certification, pursuant to Article XIII, Termination, for termination of these Orders.

OHIO E.P.A.

DEC -4 96

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IT IS SO ORDERED:



Donald R. Schregardus, Director  
Ohio Environmental Protection Agency

DEC - 4 1996

Date

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DEC -4 96  
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WAIVER AND AGREEMENT

In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent hereby agrees that this Modification of Director's Final Findings and Orders is lawful and reasonable, and agrees to perform all actions required by this Modification of Director's Final Findings and Orders.

The Respondent hereby waives the right to appeal the issuance, terms and service of this Modification of Director's Final Findings and Orders and hereby waives any rights it may have to seek judicial review of such Modification of Director's Final Findings and Orders either in law or equity.

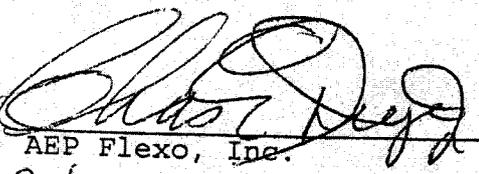
Notwithstanding the preceding, the Ohio EPA and Respondent agree that in the event that this Modification of Director's Final Findings and Orders is appealed by any other party to the Environmental Board of Review, or any court, Respondent retains the right to intervene and participate in such appeal. In such event, Respondent shall continue to comply with this Modification of Director's Final Findings and Orders notwithstanding such appeal and intervention unless this Modification of Director's Final Findings and Orders is stayed, vacated or modified.

IT IS SO AGREED:

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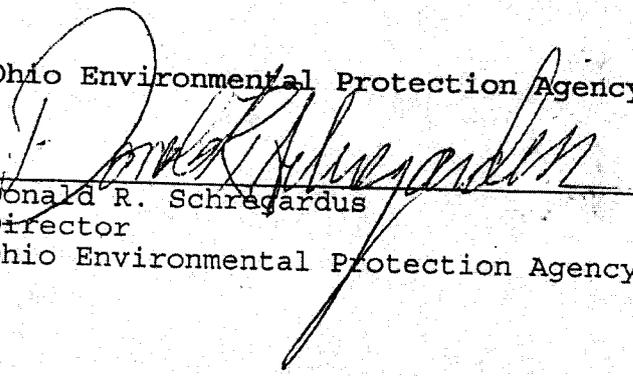
DEC -4 96

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By:   
AEP Flexo, Inc.

11/6/96  
Date

CHAS E. DEYE JR  
Typed or printed name  
PRESIDENT  
Title

Ohio Environmental Protection Agency  
  
Donald R. Schregardus  
Director  
Ohio Environmental Protection Agency

DEC - 4 1996  
Date

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**APPENDIX B  
SAMPLE DEED NOTICE**

THIS DEED NOTICE ON REAL PROPERTY ("Notice") is made on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Billy L. Robinson on behalf of Thunder Property Holdings, LLC (TPH) whose address is 109 Marisa Drive, Middletown, Ohio 45042 ("Declarant").

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of real property more particularly described on the attached Exhibit A and identified as the former AEP Flexo, Inc. property located at 1300 Hook Drive, in the City of Middletown, County of Butler State of Ohio ("the Property"); and

**WHEREAS**, the Property is subject to Consent Order for Permanent Injunction filed on \_\_\_\_ day of \_\_\_\_\_, 2006 ("COPI"), as well as Director's Final Findings and Orders for Source Control Interim Action ("IA") issued to AEP Flexo, Inc. by the Director of the Ohio Environmental Protection Agency ("Ohio EPA") on July 28, 1993, as amended on October 10, 1996 and December 4, 1996 ("Orders"). A copy of the COPI and the Orders may be obtained by contacting Ohio EPA's Division of Emergency and Remedial Response at the Southwest District Office, 401 East Fifth Street, Dayton, Ohio 45402-2911, (937) 285-6357; and

**WHEREAS**, the purpose of the COPI and the Orders is to remediate ground water at the Site, pay all costs, and ensure compliance with all other requirements as set forth in the COPI and the Orders; and

**WHEREAS**, at the time this notice was recorded, the monitoring, treatment and containment devices/systems depicted on Exhibit A (*attach map*) are present and must not be adversely affected. For as long as the Property is subject to the COPI and the Orders as described herein, each instrument hereafter conveying any interest in the Property, or any portion of the Property shall



**EXHIBIT A**

Being a tract of land 33,750 square feet in area in a portion of Part Lot 8835, as the same is known and designated on the recorded plats of the City of Middletown, County of Butler, State of Ohio, and more particularly described as follows:

BEGINNING at a point on the existing westerly right of way line of Hook Drive, said point being on the northeasterly corner of Lot 14343;

THENCE (1) N 68° 09' 00" W, with the northerly line of said Lot 14343, a distance of 275.16 feet to a point thereon;

THENCE (2) N 21° 51' 00" E , a distance of 125.00 feet to a point in Part Lot 8835;

THENCE (3) S 68° 09' 00" E, a distance of 264.84 feet to a point on the aforesaid westerly right of way line of Hook Drive;

THENCE (4) S 17° 08' 05" W, along the same, a distance of 125.42 feet to the point of beginning.

Subject to a 10 foot wide easement for utility purposes lying north of and adjacent to the aforesaid course number one (1) as shown on the plat recorded in Vol. 1, Page 183 of the Butler County Engineer's Record of Lot Surveys.

The above description is based upon a survey made by Robert Weincke, Registered Surveyor No. 5095, on record in the Butler County Engineer's Records of Lot Surveys, Vol. 1, Page 183, being designated thereon as a "future split".

Parcel # Q6511-026.000-020

## APPENDIX C

### ESCROW AGREEMENT

This Escrow Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and among CHARLES E. DEYE, JR. (hereinafter referred to as "Deye"), and BILLY L. ROBINSON (hereinafter referred to as "Robinson") (collectively, "Grantors"), and KEVIN J. HOPPER (hereinafter referred to as "Escrow Agent"). This Escrow Agreement is being entered to provide financial assurance in accordance with the Consent Order for Permanent Injunction dated \_\_\_\_\_, 2006 and specifically for costs associated with the property located at 1300 Hook Drive, Butler County, Middletown, Ohio. The beneficiary of this Escrow Agreement and the escrow account established and managed hereunder is: The Ohio Environmental Protection Agency ("Ohio EPA") (hereinafter referred to as the "Beneficiary").

**WHEREAS**, the State of Ohio has filed an action captioned State of Ohio, ex. rel. Jim Petro Attorney General of Ohio vs. Thunder Property Holdings, LLC, Billy L. Robinson, and Charles E. Deye, Jr. in the Court of Common Pleas of Butler County, Ohio, being Case No. \_\_\_\_\_, seeking specified relief from the Grantors relating to releases of certain substances from certain property located at 1300 Hook Drive, Butler County, Middletown, Ohio (hereinafter referred to as the "Facility"); and

**WHEREAS**, the State of Ohio, and the Grantors have negotiated a Consent Order for Permanent Injunction ("Consent Order") in this litigation memorializing settlement of claims against the Grantors and Thunder Property Holdings, LLC; and

**WHEREAS**, the Consent Order requires the Grantors to establish an interest bearing escrow account trust fund to be known as "The 1300 Hook Drive Financial Assurance Escrow

Account” and make specified payments into this account as financial assurance for the funding of certain remedial work and payment of certain costs to be performed under the Consent Order; and

**WHEREAS**, the Grantors have proposed an escrow agent, the Beneficiary approves of the proposed escrow agent, and the proposed escrow agent agrees to act as the Escrow Agent for this Escrow Agreement;

**NOW, THEREFORE**, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**Section 1. Escrow Account.**

On or before \_\_\_\_\_, 2006, the Grantors shall deliver to the Escrow Agent the sum of Eighty Thousand Dollars (\$80,000.00), to be held, administered and disposed of as hereinafter set forth.

**Section 2. Beneficial Interest.**

All funds deposited into the Escrow Account by the Grantors and all income derived from such funds shall be held in trust for the benefit of the Beneficiary, subject to disbursement as provided in Section 3 of this Escrow Agreement.

**Section 3. Disbursements from the Escrow Account.**

Individual disbursements from the Escrow Account shall only be made:

- (a) To contractors, subcontractors, laboratories, and consultants designated in accordance with the Consent Order for funding particular remedial action projects to be performed by the Grantors. Each disbursement shall only be made upon the Escrow Agent’s receipt of an Escrow Disbursement Certificate executed by the

Grantors, and a duly authorized official of the Beneficiary in substantially the form attached hereto as Exhibit "A".

(b) Within thirty (30) days of the Grantors' receipt of the annual itemized statement of response costs, a payment shall be made to the Beneficiary for reimbursement of the response costs incurred by the Beneficiary since the effective date of the Consent Order pursuant to paragraph 47 of the Consent Order. This disbursement shall only be made upon the Escrow Agent's receipt of an Escrow Disbursement Certificate executed by the Grantors, and a duly authorized official of the Beneficiary in substantially the form attached hereto as Exhibit "A".

(c) Upon completion of the remedial work to be performed pursuant to the terms of the Consent Order, and upon completion of payment to the Beneficiary of response costs referred to in paragraph (b) above, a payment of one thousand dollars (\$1,000.00) shall be made to the Ohio Attorney General for enforcement costs pursuant to paragraph 31 of the Consent Order. This disbursement shall only be made upon the Escrow Agent's receipt of an Escrow Disbursement Certificate executed by the Grantors, and a duly authorized official of the Beneficiary in substantially the form attached hereto as Exhibit "A".

(d) To the Grantors, any amount remaining in the Escrow Account upon satisfaction of the terms of this Escrow Agreement and the Consent Order. This disbursement shall only be made upon the Escrow Agent's receipt of an Escrow Disbursement Certificate executed by the Grantors, and a duly authorized official of the Beneficiary in substantially the form attached hereto as Exhibit "A".

**Section 4. Escrow Agent.**

**Section 4.1. Duties.** The Escrow Agent's obligations and duties in connection herewith are limited to those specifically enumerated in this Escrow Agreement. The Escrow Agent shall at all times hold and invest the assets of the Escrow Account in a manner designed to preserve the principal of the Escrow Account. The Escrow Agent shall invest and reinvest the principal and income of the Escrow Account in securities of the United States Government or an agency thereof, obligations secured by the United States Government, or mutual funds investing exclusively in such securities or obligations, or on deposit in a Federally insured financial institution, in a manner designed to achieve the maximum investment return possible, consistent with the capital-preservation objective described herein.

**Section 4.2. Receipt.** The Escrow Agent shall acknowledge its receipt of amounts deposited into the Escrow Account by sending written notice within five (5) business days of such receipt to the persons identified in Section 5.6 below.

**Section 4.3. Fees.** The Escrow Agent's fees, if any, and any taxes, shall be paid directly by the Grantors and not from the Escrow Account.

**Section 4.4. Successor Escrow Agent.** The Escrow Agent shall have the right to resign as escrow agent hereunder by delivering thirty (30) days' prior notice in writing to the parties identified in Section 5.6. The Grantors and the Beneficiary shall have the right to remove the Escrow Agent at any time by joint written notice delivered to the Escrow Agent. If the Escrow Agent resigns or is removed, a successor escrow agent shall be appointed by mutual agreement of the Grantors and the Beneficiary, and such resignation or removal shall take effect upon such appointment. Any successor escrow agent at anytime serving hereunder shall be entitled to all

rights, powers, and indemnities granted to the Escrow Agent hereunder as if originally named herein.

**Section 4.5. Liability of Escrow Agent.** So long as it acts in good faith and in the exercise of its best judgment, the Escrow Agent shall not be in any manner liable or responsible for the sufficiency, correctness, genuineness, or validity of any instruments deposited with it or with reference to the form of execution thereof, or the identity, authority, or rights of any person executing or depositing same, and the Escrow Agent shall not be liable for any loss that may occur by reason of forgery, false representation, or the exercise of its discretion in any particular manner or for any other reason, except for its own negligence, gross negligence, willful misconduct, bad faith, or breach of this Escrow Agreement. Except in instances of the Escrow Agent's own negligence, gross negligence, willful misconduct, bad faith, or breach of this Escrow Agreement, the Grantors shall indemnify, defend, and hold the Escrow Agent harmless from any demands, suits or causes of action arising out of this Escrow Agreement.

**Section 4.6. Annual Accounting.** The Escrow Agent shall annually, at least thirty (30) days prior to the anniversary date of the establishment of the Escrow Account; provide to the Grantors and the Beneficiary a written statement of the current value of the Escrow Account. Any securities in the Escrow Account shall be valued at market value as of not more than sixty (60) days prior to the anniversary date of the establishment of the Escrow Account. The written statement shall include in reasonable detail the following: (a) the total funds in the Escrow Account; (b) the accrued earnings on the funds deposited into the Escrow Account; (c) the amount of the funds that have been paid out of the Escrow Account; and (d) the remaining balance of the Escrow Account.

**Section 5. Miscellaneous.**

**Section 5.1. Binding Effect.** This Escrow Agreement shall be binding upon the Grantors and the Escrow Agent, and their respective, heirs, successors and assigns.

**Section 5.2. Severability.** If any section of this Escrow Agreement, or portion hereof, shall be adjudged illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect the legality, validity, or enforceability of this Escrow Agreement, as a whole, or of any other section or portion thereof not so adjudged.

**Section 5.3. Effective Date.** This Escrow Agreement shall become effective upon the execution of this Escrow Agreement by the Grantors and the Escrow Agent.

**Section 5.4. Governing Law.** This Escrow Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Ohio.

**Section 5.5. Interpretation.** As used in this Escrow Agreement, words in the singular include the plural, and words in the plural include the singular; the masculine and neuter genders shall be deemed to include the masculine, feminine and neuter. The section headings contained in this Escrow Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Escrow Agreement.

**Section 5.6. Notices.** Any notice, request, instruction, or other document to be given hereunder by a party hereto or by the Beneficiary shall be in writing, shall be given to all other parties hereto and to the Beneficiary, and shall be deemed to have been given: (i) when received if given in person, (ii) on the date of transmission if sent by confirmed telex, facsimile, or other wire transmission, or (iii) four (4) business days after being deposited in the United States mail postage prepaid:

If to the Beneficiary, addressed as follows:

The Ohio Environmental Protection Agency  
Manager, Division of Emergency and Remedial Response  
Ohio EPA  
P.O. Box 1049  
Columbus, Ohio 43216-1049

If to Deye, addressed as follows:

Mr. Charles E. Deye, Jr.  
5514 Pine Crest Drive  
Cincinnati, Ohio 45238

With a copy to:

Kevin J. Hopper, Esq.  
KEVIN J. HOPPER CO., LPA  
7434 Jager Court  
Cincinnati, Ohio 45230

If to Robinson, addressed as follows:

Billy L. Robinson  
109 Marisa Drive  
Middletown, Ohio 45042

With a copy to:

James R. Wells, Esq.  
FROST, BROWN, TODD, LLC  
300 North Main Street, Suite 200  
Middletown, Ohio 45042

or to such other individual or address as a party hereto or the Beneficiary may designate for itself by notice given as herein provided.

**5.7. No Limitation.** The parties hereto agree that the rights and remedies of the parties and Beneficiary hereunder shall not operate to limit any other rights and remedies otherwise available to the parties and Beneficiary.

**5.8. Counterparts.** This Escrow Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**5.9. Modification.** This Escrow Agreement may be modified only by a written instrument signed by each of the parties hereto, or their successors, and approved in writing by the Beneficiary.

**5.10. Termination.** If not sooner terminated pursuant to the terms hereof, this Escrow Agreement shall terminate upon disbursement of all of the funds held in the Escrow Account, and may be terminated prior to that date by written mutual consent signed by the Grantors and the Beneficiary.

**IN WITNESS WHEREOF**, the parties hereto have executed this Escrow Agreement.

**DEYE:**

\_\_\_\_\_  
Charles E. Deye, Jr.

\_\_\_\_\_  
**DATE**

**ROBINSON:**

\_\_\_\_\_  
Billy L. Robinson

\_\_\_\_\_  
**DATE**

**ESCROW AGENT:**

\_\_\_\_\_

\_\_\_\_\_  
**DATE**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A" TO ESCROW AGREEMENT**

**ESCROW DISBURSEMENT CERTIFICATE**  
**UNDER ESCROW AGREEMENT**

Reference is made to that certain Escrow Agreement for The 1300 Hook Drive Financial Assurance Escrow Account (the "Escrow Account") dated \_\_\_\_\_, 2006, by and among CHARLES E. DEYE, JR. (hereinafter referred to as "Deye"), BILLY L. ROBINSON (hereinafter referred to as "Robinson"), and Kevin J. Hopper (hereinafter referred to as "Escrow Agent"), with the following beneficiary: The Ohio Environmental Protection Agency ("Ohio EPA") (hereinafter referred to as the "Beneficiary").

The Beneficiary hereby certifies as follows:

This Escrow Disbursement Certificate is submitted pursuant to Section 3 of the Escrow Agreement and Subparagraph XIII of the Consent Order in the case captioned State of Ohio, ex. rel. Jim Petro Attorney General of Ohio vs. Thunder Property Holdings, LLC, Billy L. Robinson and Charles E. Deye, Jr. and in the Court of Common Pleas of Butler County, Ohio, being Case No. \_\_\_\_\_. This disbursement is sought for funding remediation activities to be performed and costs to be paid by Deye and Robinson at the 1300 Hook Drive, Butler County, Middletown, Ohio site under Section IV, IX, and XV of the Consent Order.

**You are hereby instructed to disburse \$ \_\_\_\_\_**

**to \_\_\_\_\_**

**The disbursement should be made in accordance with the payment instructions attached hereto.**

OHIO ENVIRONMENTAL PROTECTION AGENCY

By: \_\_\_\_\_

Title: AEP Flexo Site Coordinator

DEYE:

\_\_\_\_\_  
Charles E. Deye, Jr.

ROBINSON:

\_\_\_\_\_  
Billy L. Robinson



STATE OF OHIO  
OFFICE OF THE ATTORNEY GENERAL  
JIM PETRO, ATTORNEY GENERAL

Environmental Enforcement  
30 E. Broad St.  
Columbus, OH 43215-3400  
Telephone: (614) 466-2766  
Facsimile: (614) 644-1926  
www.ag.state.oh.us



August 30, 2006

Honorable Judge Keith M. Spaeth  
Butler County Common Pleas Court  
315 High Street, Third Floor  
Hamilton, Ohio 45011

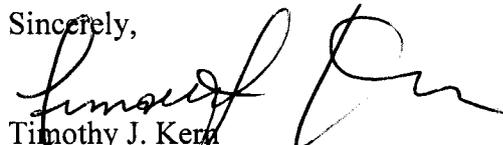
Re: **State of Ohio v. Thunder Property Holdings, LLC et al., Case No CV 2006 07 2543**  
**(Butler County)**

Dear Honorable Judge Spaeth:

Enclosed is the original Consent Order signed by Defendants Thunder Property Holdings, LLC, Billy J. Robinson, and Charles E. Deye, Jr. ("the Defendants") and Plaintiff, State of Ohio. As stated in my letter of July 20, 2006, the Consent Order has been public noticed. This public notice occurred in the *Hamilton Journal-News* and Ohio EPA's *Weekly Journal*, and no public comments regarding the Consent Order were received by the State.

Therefore, the parties request that you review the Consent Order. If the Consent Order meets with your approval, the parties request that you sign the Consent Order and submit it to the Clerk for filing. I request that the Clerk's Office send to counsel for the parties a copy of the time-stamped first page and your signature page for our records. If you have any questions or need to talk to counsel for the parties, please contact me.

Sincerely,

  
Timothy J. Kern  
Principal Assistant Attorney General  
Environmental Enforcement Section  
(614) 466-5261

Attorney for Plaintiff, State of Ohio

cc: Kevin J. Hopper, Esq., Attorney for Charles E. Deye, Jr.  
James R. Wells, Esq., Attorney for Thunder Property Holdings, LLC  
and Billy L. Robinson